

23-cv-02171

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re Voyager Digital Holdings, Inc., et al, Debtors

United States of America, et al., Appellants,

v.

Voyager Digital Holdings, Inc., et al., Appellees

**ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**APPELLEES' APPENDIX**

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April 14, 2023

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Hearing Date: January 5, 2023, at 1:00 p.m. (prevailing Eastern Time)  
Objection Deadline: December 30, 2022, at 4:00 p.m. (prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF HEARING ON DEBTORS' MOTION  
FOR ENTRY OF AN ORDER (I) AUTHORIZING ENTRY INTO THE  
BINANCE US PURCHASE AGREEMENT AND (II) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that a hearing on the *Debtors' Motion for Entry of An Order (I) Authorizing Entry Into the Binance US Purchase Agreement and (II) Granting Related Relief* (the "Motion,")) will be held on **January 5, 2023, at 1:00 p.m., prevailing Eastern Time** (the "Hearing"). In accordance with General Order M-543 dated March 20, 2020, the Hearing will be conducted telephonically. Any parties wishing to participate must do so by making arrangements through CourtSolutions by visiting <https://www.court-solutions.com>.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.



Procedure, the Local Bankruptcy Rules for the Southern District of New York, and all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York; (c) be filed electronically with the Court on the docket of *In re Voyager Digital Holdings, Inc.*, No. 22-10943 (MEW) by registered users of the Court's electronic filing system and in accordance with all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York (which are available on the Court's website at <http://www.nysb.uscourts.gov>); and (d) be served so as to be actually received by **December 30, 2022, at 4:00 p.m., prevailing Eastern Time**, by (i) the entities on the Master Service List available on the case website of the above-captioned debtors and debtors in possession (the "Debtors") at <https://cases.stretto.com/Voyager> and (ii) any person or entity with a particularized interest in the subject matter of the Motion.

**PLEASE TAKE FURTHER NOTICE** that only those responses or objections that are timely filed, served, and received will be considered at the Hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.

**PLEASE TAKE FURTHER NOTICE** that copies of the Motion and other pleadings filed in these chapter 11 cases may be obtained free of charge by visiting the website of Stretto at <https://cases.stretto.com/Voyager>. You may also obtain copies of the Motion and other pleadings filed in these chapter 11 cases by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

*[Remainder of page intentionally left blank]*

Dated: December 21, 2022  
New York, New York

*/s/ Joshua A. Sussberg*

**KIRKLAND & ELLIS LLP**

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**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

In re:	)	
	)	Chapter 11
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VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**DEBTORS' MOTION FOR**  
**ENTRY OF AN ORDER (I) AUTHORIZING ENTRY INTO THE**  
**BINANCE US PURCHASE AGREEMENT AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):<sup>2</sup>

**Preliminary Statement**

1. For the better part of the past year, the cryptocurrency industry experienced (and continues to experience) unprecedented turmoil. The Debtors commenced these chapter 11 cases with the objective of consummating the most value-maximizing transaction for their customers and other creditors on an expedited timeline. Following a thorough and extensive marketing

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

<sup>2</sup> Capitalized terms used by not defined herein shall have the meaning given to them in the Binance US Purchase Agreement or the Bidding Procedures (each as defined below), as applicable.

process, the Debtors believed they accomplished that goal with the proposed sale transaction with West Realm Shires Inc. (“WRSI” and, along with affiliates, “FTX,” and the sale transaction thereunder, the “FTX Transaction”). However, and as discussed in more detail herein, the shocking collapse of FTX gutted any possibility of closing the FTX Transaction. The Debtors quickly pivoted to reengaging with alternative bidders and on December 18, 2022 executed that certain asset purchase agreement (the “Binance US Purchase Agreement”) with BAM Trading Services Inc. d/b/a Binance.US (“Binance US” and the sale transaction thereunder, the “Binance US Transaction”). Importantly, the contemplated Binance US Transaction includes a “toggle” to a transaction whereby the Debtors will return cryptocurrency to creditors should they conclude that option to be in creditors’ best interests and exercise their “Fiduciary Out,” or should the Binance US Transaction not close by a date certain to ensure an outside date (the “Toggle Transaction”).

2. The Debtors value Binance US’s bid at approximately \$1.022 billion, comprised of (a) the value of cryptocurrency on the Voyager platform as of a date to be determined, which as of December 19, 2022 at 0:00 UTC, is estimated to be \$1.002 billion, plus (b) additional consideration, which is estimated to provide at least \$20 million of incremental value. The Debtors intend to move swiftly towards confirmation and resolution of these chapter 11 cases in order to mitigate any further delay in distributing recoveries to their creditors.

#### **I. The Initial Marketing Process and Proposed Sale to FTX.**

3. Before the Petition Date, and as discussed in the *Declaration of Stephen Ehrlich, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 15] (the “First Day Declaration”), the Debtors commenced a marketing process for an investment in, or a sale of the Debtors’ business to, a third-party purchaser. Discussions with

interested parties, however, revealed that an in-court process would be necessary to yield the most value-maximizing transaction available to the Debtors. Accordingly, the Debtors commenced these chapter 11 cases and continued their marketing efforts postpetition.

4. The Debtors and their advisors left no stone unturned. Over the past six months, Moelis & Company LLC (“Moelis”), the Debtors’ investment banker, reached out to 96 strategic investors and financial sponsors, many of which had significant experience in the cryptocurrency industry. 60 parties executed non-disclosure agreements and were provided with access to a virtual data room with comprehensive information regarding the Debtors’ business operations and financial position. The virtual data room was robust, supplemented throughout the marketing process, and contained thousands of diligence items. Moelis also held virtual diligence sessions with the Debtors and multiple interested parties.

5. On the first day of these chapter 11 cases, the Debtors filed the *Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 17] (as amended and restated from time to time, the “Standalone Plan”). The Standalone Plan served as a floor for the marketing process. Shortly thereafter, the Debtors filed the *Debtors’ Motion Seeking Entry of an Order (I) Approving the Bidding Procedures and Related Dates and Deadlines, (II) Scheduling Hearings and Objection Deadlines with Respect to the Debtors’ Sale, Disclosure Statement, and Plan Confirmation, and (III) Granting Related Relief* [Docket No. 126] (the “Bidding Procedures Motion,” and the bidding procedures established therein, the “Bidding Procedures”),<sup>3</sup> which set a timeline for interested

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<sup>3</sup> The Court approved the Bidding Procedures Motion on August 5, 2022. See *Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Debtors’ Sale, Disclosure Statement, and Plan Confirmation, and (V) Granting Related Relief* [Docket No. 248] (the “Bidding Procedures Order”).

parties to submit bids for an acquisition of the Debtors' assets and procedures for conducting an auction if multiple bids were received.

6. The Debtors' marketing process proved fruitful and yielded bids from numerous strategic investors. Accordingly, on September 13, 2022, the Debtors commenced an auction (the "Auction") to determine the winning bid. The two-week Auction consisted of hard-fought, arm's-length negotiations with each participating bidder. At the conclusion of the Auction, WRSI was announced as the Successful Bidder.

7. This court entered an *Order Authorizing Entry into the Asset Purchase Agreement* [Docket No. 581] (the "FTX Purchase Agreement") on October 20, 2022. Details of the FTX Transaction were set forth in the Debtors' *First Amended Disclosure Statement Relating to the Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 498] (the "FTX Disclosure Statement") and contemplated to be effectuated pursuant to the *Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 590] (the "FTX Plan"). The Court entered an order approving the adequacy of the FTX Disclosure Statement on October 21, 2022 [Docket No. 586], and solicitation for acceptance or rejection of the FTX Plan commenced shortly thereafter. A confirmation hearing was scheduled for December 8, 2022. However, a mere two weeks after solicitation commenced, it quickly became evident that any transaction with FTX would be unattainable.

## **II. The FTX Collapse.**

8. Shortly after public reports emerged drawing concern around FTX and the legitimacy of its operations, on November 11, 2022, 101 FTX entities commenced filing for voluntary relief under chapter 11 in the United States Bankruptcy Court for the District of

Delaware (the “FTX Bankruptcy Proceeding”).<sup>4</sup> WRSI, the contemplated purchaser under the FTX Transaction, filed for chapter 11 on November 14, 2022.

9. While the FTX Bankruptcy Proceeding is still unfolding, early indications are that the former Chief Executive Officer of FTX, Sam Bankman-Fried, and FTX were carrying on one of the largest financial frauds in history. Mr. John Ray III, who was appointed Chief Executive Officer of FTX following the resignation of Mr. Bankman-Fried and who previously oversaw the restructuring of Enron, commented in an early filing in the FTX Bankruptcy Proceeding that “[n]ever in my career have I seen such a complete failure of corporate controls and such a complete absence of trustworthy financial information.”<sup>5</sup> On December 12, 2022, Mr. Bankman-Fried was arrested by the Bahamian Police and is currently being held at the Fox Hill Prison in Nassau, Bahamas without bail. The full extent of the injury caused by FTX’s apparent fraud will likely take years to uncover.

### **III. Continuation of the Marketing Process.**

10. As FTX appeared to be collapsing, but before its chapter 11 filing, on November 10, 2022, the Debtors requested that FTX waive the “No-Shop” provision (Section 5.2) of the FTX Purchase Agreement. FTX, through its counsel, acquiesced. On December 9, 2022, the Debtors filed with this Court the *Joint Stipulation and Agreed Order Between the Debtors and FTX US* seeking to terminate the FTX Purchase Agreement [Docket No. 717] (the “Stipulation”). The Debtors and FTX intend to seek approval of the Stipulation by the court overseeing the FTX Bankruptcy Proceeding as well.

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<sup>4</sup> *In re FTX Trading Ltd.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Nov. 11, 2022).

<sup>5</sup> *Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 24], filed in *In re FTX Trading Ltd.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Nov. 17, 2022); *see also United States of America v. Samuel Bankman-Fried*, 22-crim-673 (S.D.N.Y. December 9, 2022); *Securities and Exchange Commission v. Samuel Bankman-Fried*, Civil Action. No. 22-cv-10501 (S.D.N.Y. Dec. 13, 2022).

11. While the Debtors were shocked and dismayed by FTX's cataclysmic collapse, they swiftly reengaged in negotiations with other potential counterparties to evaluate alternative transactions that would maximize value for the Debtors and their creditors.

12. As disclosed throughout the entirety of these cases, the Debtors had already conducted a comprehensive marketing process that resulted in a two-week Auction and leveraged those prior efforts to move quickly towards agreement with an alternative bidder. While many of the parties that the Debtors engaged with following the FTX collapse were previously involved in the marketing process, several new parties expressed interest and engaged in discussions with the Debtors. When analyzing proposals received from interested parties, the Debtors and their advisors considered both the viability and risk factors associated with each proposed transaction, including but not limited to, timing considerations, third-party financing requirements, ability to consummate, cybersecurity risks, regulatory and licensing status, and counterparty risk based on the Debtors' counterparty due diligence conducted during the one-month negotiation period.

13. Notably, the Debtors and their advisors contemplated pursuing the Toggle Transaction. The Debtors and their advisors determined that pursuing the Toggle Transaction would impose costs of its own on the Debtors, would take time, and would present its own risks. Among other things, the Toggle Transaction would involve the Debtors "rebalancing" their cryptocurrency holdings to prepare for distributions to creditors, and then reopening the Voyager platform for approximately a month to allow customers to withdraw their pro rata share of cryptocurrency, to the extent it can be withdrawn. While a viable option, the Toggle Transaction, among other things, would likely (a) be less tax efficient for customers than a third party transaction; (b) lead to incremental value leakage over and above that in a third party transaction; (c) create additional security risks (particularly if the Debtors are unable to retain critical personnel



necessary to perform the Toggle Transaction); (d) require the Debtors to liquidate additional cryptocurrency as working capital to complete the work required; (e) strand certain cryptocurrency, which can be withdrawn by customers from certain third party exchanges (like Binance US) but not from Voyager; and (f) severely damage the value of the VGX token, which is the native token of the Voyager platform.

#### **IV. The Proposed Sale to Binance US.**

14. Following good-faith, arm's length negotiations with several alternative transaction parties, the Debtors determined that based on the information they have to date, the transaction proposed by Binance US was the highest or otherwise best offer available for the Debtors' assets. The Debtors value the Binance US Transaction at approximately \$1.022 billion, comprising (i) the value of cryptocurrency on the Voyager platform as of a date to be determined, which as of December 19, 2022 at 0:00 UTC, is estimated to be \$1.002 billion, plus (ii) additional consideration, which is estimated to provide at least \$20 million of incremental value. The Binance US Transaction also includes additional benefits, such as it (i) provides the most tax efficient route forward as Binance US supports 100% of the cryptocurrency coins on the Debtors' platform, (ii) it is the only transaction available to the Debtors that did not require the Debtors to liquidate cryptocurrency for working capital purposes, (iii) includes reimbursement by Binance US of up to \$15 million of Seller's expenses, (iv) provides a \$10 million reverse termination fee payable to the Seller by Binance US to compensate the Debtors' estates in the event that Binance US cannot consummate the transaction, and (v) in the event that the Debtors pivot to the Toggle Transaction, provides that Binance US will provide certain services to facilitate such transaction to ensure that the Debtors can rely on the Binance US platform to minimize leakage with and cybersecurity risks when returning cryptocurrency to creditors.

15. It was (and is) well known that the Debtors' assets were once again for sale following the very public FTX collapse. The Debtors believed (and continue to believe) that time is of the essence to enter into a transaction that can be consummated expeditiously to reduce the administrative costs of these chapter 11 cases, maximize stakeholder recoveries, and minimize uncertainty while the cryptocurrency environment continues to fluctuate. Nonetheless, as described in the Tichenor Declaration, the most recent marketing process was thorough, public, fair, and produced the most value-maximizing transaction upon culmination of further negotiations with several interested parties.

16. The Debtors will seek to effectuate the Binance US Transaction through the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan"), filed substantially contemporaneously herewith, whereby the Debtors' customers and other creditors will be able to vote to accept or reject the Plan and ultimately the Binance US Transaction included therein. The Debtors do not seek approval of the Binance US Transaction through this Motion.

17. However, by this Motion, the Debtors do seek the Court's approval to enter into the Binance US Purchase Agreement. The Binance US Purchase Agreement provides a viable path for the Debtors to exit from these chapter 11 cases in an industry experiencing significant volatility during the continued "Crypto Winter." Prior to approval of this Motion, the Debtors are subject to a strict "No Shop" under the Binance US Purchase Agreement. The "No Shop" was important to Binance US during the interim period between the filing of the Binance US Purchase Agreement and the hearing on this Motion during which Binance US would not have the protection of payment of the Purchaser Expenses (as defined below) in the event the Debtors determined to proceed with a higher and/or better offer. Upon approval of this Motion, the "No Shop" provision will revert to

the formulation approved by the Court in connection with the FTX Transaction, which (if approved) would prohibit the Seller from initiating contact with, or soliciting, an alternative transaction. However, the “No Shop” provision does not prohibit any other party from coming forward with a higher and better offer.

18. Importantly, the Binance US Purchase Agreement contains a “Fiduciary Out”, which provides that the Seller may terminate the Binance US Purchase Agreement at any time in the event that not doing so would be inconsistent with the Seller’s fiduciary duties. Moreover, the structure of the proposed transaction, including its “Fiduciary Out,” permits the Debtors to toggle *either* to a higher and better third-party bid (should one emerge) *or* to the Toggle Transaction, if the Debtors determine in their business judgment between now and closing that the Binance US Transaction is no longer the highest and best option for any reason. Based on the diligence the Debtors have performed to date on their proposed counterparty, they believe the Binance US Transaction is the highest and best option. But the Debtors recognize that the cryptocurrency industry is experiencing an extremely volatile period for an already volatile business, and the Debtors continue to monitor what seem to be daily developments in the sector. Not only does the structure of the proposed transaction permit the Debtors to pivot to the Toggle Transaction if they conclude the Binance US Purchase Agreement is no longer higher and better due to a development along the way, but also the work to prepare to consummate and execute on the Binance US Purchase Agreement will better prepare the Debtors to complete the Toggle Transaction if the toggle becomes necessary.

19. The Binance US Purchase Agreement includes an expense reimbursement provision whereby the Seller would be responsible to reimburse Binance US for its reasonable and documented out-of-pocket expenses of up to \$5 million in the event the Binance US Purchase

Agreement is terminated (a) by the Seller if the closing has not occurred by the Outside Date or extended Outside Date, as applicable, in circumstances where Binance US would be entitled to terminate the Binance US Purchase Agreement for breach of the Binance US Purchase Agreement by the Seller, or (b) pursuant to Section 8.1(e) (Seller breach), Section 8.1(g) (Seller exercise of the fiduciary out), Section 8.1(h) (dismissal or conversion of the chapter 11 cases to chapter 7, or if the automatic stay is lifted with respect to any Acquired Assets), or Section 8.1(i)(ix) (Seller breach of the “No Shop”); *provided* that if the Binance US Purchase Agreement is validly terminated by Seller pursuant to Section 8.1(g) (Seller exercise of the fiduciary out) (x) in order for Seller to pursue the Toggle Transaction as a result of and following any Effect with respect to Binance US’s business, financial condition, operations, assets, management, employees, compliance, or liabilities, taken as a whole, or any Effect with respect to Binance US’s Affiliates that has an Effect thereon that would reasonably be expected to (i) prevent or materially impair or materially delay the ability of Binance US to consummate the Binance US Transaction or (ii) materially and adversely affect the customers, creditors, or the acquired cryptocurrency on the Binance US platform, and (y) such termination was not caused by (i) the Debtors determination to pursue a higher and better offer from a third party or (ii) because the estimated proceeds from the Toggle Transaction are or would reasonably be expected to be greater than the consideration under the Binance US Transaction, then no Purchaser Expenses shall be payable (the “Purchaser Expenses”).<sup>6</sup> *See* Binance US Purchase Agreement, Section 6.22. The Purchaser Expenses were negotiated at arm’s length and insisted on by Binance US as a required condition to entering into the Binance US Purchase Agreement. However, the Purchaser Expenses are narrow. The Debtors

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<sup>6</sup> This summary of the circumstances that can trigger the Purchaser Expenses is entirely qualified by the Binance US Purchase Agreement (including Sections 6.22 and 8.1 thereof). In the event that there is a conflict between this summary and Binance US Purchase Agreement, the Binance US Purchase Agreement shall govern.

believe that the Purchaser Expenses, which are only triggered in the limited circumstances noted above, are a small price to pay to lock in a transaction that will provide meaningful recoveries to creditors in these chapter 11 cases.

20. Further, the Debtors successfully negotiated additional assurances and value for the benefit of their estates under the Binance US Purchase Agreement, including (i) reimbursement by Binance US of up to \$15 million of Seller's expenses, (ii) a \$10 million good faith deposit paid by Binance US to the Seller, and (iii) a \$10 million reverse termination fee payable to the Seller by Binance US, in each case, subject to the terms and conditions set forth in the Binance US Purchase Agreement.

21. In light of the foregoing, the Debtors believe that entry into the Binance US Purchase Agreement is in the best interests of the Debtors' estates.

### **Relief Requested**

22. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"), (i) authorizing entry into the Binance US Purchase Agreement and (ii) granting related relief. In support of the Debtors' request for entry of the Order, the Debtors submit the Tichenor Declaration, filed substantially contemporaneously herewith.<sup>7</sup>

### **Jurisdiction and Venue**

23. The United States Bankruptcy Court for the Southern District of New York (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, entered February 1, 2012. The Debtors confirm their consent to the Court

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<sup>7</sup> See Declaration of Brian Tichenor in Support of the Debtors' Motion for Entry of An Order (I) Authorizing Entry Into the Binance US Purchase Agreement and (II) Granting Related Relief (the "Tichenor Declaration"), filed substantially contemporaneously herewith.

entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

24. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

25. The bases for the relief requested herein are sections 105(a), 363, 1107, and 1108 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 2002-1 and 9006-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), and the *Sale Guidelines for the Conduct of Asset Sales Established and Adopted by the United States Bankruptcy Court for the Southern District of New York Pursuant to General Order M-383* (the “Sale Guidelines”).

### **Background**

26. On July 5, 2022 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description of the facts and circumstances of these chapter 11 cases is set forth in the First Day Declaration, incorporated by reference herein.

27. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases have been consolidated for procedural purposes only and are jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 18]. On July 19, 2022, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an official committee of unsecured creditors [Docket No. 102] (the “Committee”).

### **Summary of the Key Terms of the Binance US Purchase Agreement**

28. As described herein, the Debtors executed the Binance US Purchase Agreement following a robust and extensive marketing process and multiple rounds of bidding at the Auction over the course of two weeks and then further engagement with interested third parties following the FTX collapse. The following chart summarizes the principal terms of the Binance US Purchase Agreement.

Agreement Provision	Summary Description <sup>8</sup>
<b>Parties</b>	<p><u>Seller</u>: Voyager Digital, LLC</p> <p><u>Purchaser</u>: BAM Trading Services Inc. d/b/a Binance US</p>
<b>Purchase Price</b>	<ul style="list-style-type: none"> <li>The Purchase Price to be paid by Purchaser for the purchase of the Acquired Assets shall be: (i) (A) the assumption of Assumed Liabilities, (B) a cash payment of \$20,000,000, (C) the Seller Expenses, if any, payable pursuant to Section 6.21, and (D) Purchaser's obligations to make the payments set forth in Section 6.12 and Section 6.14.</li> </ul> <p><b>See Binance US Purchase Agreement, § 2.1.</b></p>
<b>Acquired Assets</b>	<ul style="list-style-type: none"> <li>all Acquired Coins, together with all information regarding the underlying networks and smart contracts to which such Acquired Coins are subject;</li> <li>to the extent permissible under applicable Law, (1) all (i) information and Personal Information (including, for the avoidance of doubt, names, account numbers, social security numbers, passports (including passport numbers), drivers licenses (including driver license numbers), "liveness check" selfies, email addresses, mailing addresses, phone numbers, contact information, usernames, user IDs, passwords, and any Personal Information collected for purposes of KYC Procedures) related to (A) all active and inactive accounts of Users ("Voyager User Accounts") and (B) any other consumers located or having a home address in the United States from whom Personal Information was collected by Seller; (ii) information that has been anonymized, pseudonymized, or otherwise de-identified; (iii) data contained in the Seller Statement or the Post-Bankruptcy Statement; (iv) information relating to Voyager User Accounts that must be obtained and retained by Purchaser or any of its Affiliates for regulatory or legal purposes; and (v) any encryption key, passcode or cypher required to access any of the foregoing (collectively, the "Acquired User Data"), and (2) all other information and data relating to the other categories of Acquired Assets, the Voyager Platform, other than Acquired User Data (clauses (1) and (2), collectively, "Acquired Information");</li> <li>all rights, causes of action, claims (including, for the avoidance of doubt,</li> </ul>

<sup>8</sup> This summary is qualified in its entirety by the Binance US Purchase Agreement. In the event that there is a conflict between this summary and the Binance US Purchase Agreement, the Binance US Purchase Agreement shall govern.

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	<p>any claims and causes of action arising under Chapter 5 of the Bankruptcy Code), counterclaims, defenses, credits, rebates, demands, allowances, refunds (other than Tax refunds or Tax attributes, in each case, to the extent enumerated in Section 1.2(i)), causes of action, rights of set off, rights of recovery, rights of recoupment or rights under or with respect to express or implied guarantees, warranties, representations, covenants or indemnities of any kind, in each case that Seller may have against any User located or having a home address in the United States solely to the extent that such claim or cause of action is against a User in such Person's capacity as a User (in each case, excluding (i) Retained Avoidance Actions, (ii) claims, causes of action or other rights against Seller or any of its Affiliates, or (iii) any of the foregoing to the extent relating to any Credit Matter) (collectively, "Acquired Voyager Claims");</p> <ul style="list-style-type: none"> <li>other than VGX Token Smart Contracts, all Intellectual Property owned by Seller or otherwise used or held for use by or on behalf of Seller in connection with the operation of its businesses, including all Business Software (in source code and object code form), any Bedrock source code and other IT Systems owned by Seller and required to operate the Voyager Platform, all Business Accounts (provided that Purchaser may elect, by written notice to Seller until two (2) Business Days prior to the Closing Date, to designate any Business Account(s) as Excluded Asset(s)), all rights to collect royalties and proceeds in connection therewith with respect to the period from and after the Closing, all rights, claims and causes of action to sue and recover for past, present and future infringements, dilutions, misappropriations of, or other conflicts with, such Intellectual Property and any and all corresponding rights that, now or hereafter, may be secured throughout the world;</li> <li>all rights to continue the customer relationships with customers of Seller and its Affiliates to the extent pertaining to savings and trading services related to Cryptocurrency;</li> <li>all Contracts listed on Schedule 1.1(f) (the "Assigned Contracts") (for the avoidance of doubt, not including the 3AC Loan); and</li> <li>other than the Excluded Documents, all Documents, goodwill, payment intangibles and general intangible assets and rights of or otherwise used or held for use by or on behalf of Seller and its Affiliates, in each case in connection with or related to any of the foregoing categories of Acquired Assets; provided that Seller shall be entitled to retain copies of Documents (subject to Section 6.19).</li> </ul> <p><b>See Binance US Purchase Agreement, § 1.1.</b></p>
<b>Excluded Assets</b>	<p>All other properties, rights, interests and other assets of Seller that are not Acquired Assets, including the following:</p> <ul style="list-style-type: none"> <li>all Cash and Cash Equivalents, all bank accounts, and all deposits (including maintenance deposits and security deposits for rent, electricity, telephone or otherwise) or prepaid or deferred charges and expenses, including all lease and rental payments, that have been prepaid by Seller, and any retainers or similar amounts paid to Advisors or other professional service providers, in each case, other than the Acquired Coins;</li> <li>all Contracts of Seller other than the Assigned Contracts, including the</li> </ul>



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	<p>Contracts listed on Schedule 1.2(b) (the “Excluded Contracts”);</p> <ul style="list-style-type: none"> <li>all Documents, in each case, (i) to the extent they are primarily used in, or primarily relate to, any of the Excluded Assets or Excluded Liabilities (including information stored on the computer systems, data networks or servers of Seller, other than Voyager User Accounts), (ii) to the extent that such Documents constitute Seller’s financial accounting Documents, all minute books, organizational documents, stock registers and such other books and records of Seller to the extent pertaining to the ownership, organization or existence of Seller, Tax Returns (and any related work papers), corporate seals, checkbooks, and canceled checks, in each case to the extent not primarily relating to the Acquired Assets or Assumed Liabilities or (iii) that Seller is required by Law to retain; provided that, to the extent not prohibited by applicable Law, Purchaser shall have the right to make copies of any portions of such Documents;</li> <li>all Documents to the extent prepared or received by Seller or any of its Affiliates in connection with the sale of the Acquired Assets, the Agreement, or the Transactions, including (i) all records and reports prepared or received by Seller or any of its Affiliates or Advisors in connection with the sale of the Acquired Assets and the Transactions, including all analyses relating to the business of Purchaser or its Affiliates so prepared or received in connection therewith, (ii) all bids and expressions of interest received from third parties with respect to the acquisition of Seller’s business or assets, and (iii) all privileged materials, documents and records of Seller or any of its Affiliates (together with the Documents specified in Sections 1.2(c) and 1.2(h), the “Excluded Documents”);</li> <li>all current and prior insurance policies of Seller, including for the avoidance or doubt all director and officer insurance policies, and all rights and benefits of any nature of Seller with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries, in each case, other than Acquired Voyager Claims;</li> <li>all membership interests or other equity interests of Seller or any of its Affiliates or securities convertible into, exchangeable, or exercisable for any such membership interests or other equity interests;</li> <li>(i) all Retained Avoidance Actions, (ii) all preference or avoidance claims or actions arising under the Bankruptcy Code or applicable Law, (iii) all other rights, claims, causes of action, rights of recovery, rights of set-off, and rights of recoupment as of the Closing of Seller or any of its Affiliates, in each case, either (A) arising out of or relating to events occurring on or prior to the Closing Date, except as set forth in Section 1.1, or (B) related to any Credit Matter, and (iv) all claims that Seller or any of its Affiliates may have against any Person with respect to any other Excluded Assets or any Excluded Liabilities, in each case other than Acquired Voyager Claims;</li> <li>Seller’s claims or other rights under the Agreement, including the Purchase Price, or any agreement, certificate, instrument, or other document executed and delivered between Seller and Purchaser or their respective Affiliates in connection with the Transactions, or any other agreement between Seller and Purchaser or their respective Affiliates</li> </ul>

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	<p>entered into on or after the date hereof;</p> <ul style="list-style-type: none"> <li>• (x) all Tax attributes of Seller or its Affiliates (including refunds of income Taxes of Seller or its Affiliates, but excluding any Tax refunds or Tax attributes with respect to Taxes in respect of the Acquired Assets for any taxable period (or portion thereof) beginning after the Closing Date allocable to Purchaser in accordance with Section 9.3(d) or with respect to Transfer Taxes), (y) all Tax refunds and Tax attributes with respect to Taxes in respect of the Acquired Assets (i) for any Pre-Closing Tax Period or (ii) that are Excluded Liabilities, and (z) all Tax refunds and Tax attributes with respect to Taxes in respect of the Excluded Assets;</li> <li>• every asset of Seller that would otherwise constitute an Acquired Asset (if owned immediately prior to the Closing) if conveyed or otherwise disposed of during the period from the date hereof until the Closing Date (i) at the direction of the Bankruptcy Court or (ii) as otherwise permitted under Section 6.1(b);</li> <li>• all demands, allowances, refunds, rebates (including any vendor or supplier rebates), rights (including under or with respect to express or implied guarantees, warranties, representations, covenants and indemnities), claims, counterclaims, defenses, credits, causes of action, rights of set off, rights of recovery or rights of recoupment relating to or arising against suppliers, vendors, merchants, manufacturers and counterparties to leases, licenses or any Contract, arising out of or relating to events occurring on or prior to the Closing Date, in each case other than Acquired Voyager Claims;</li> <li>• the properties, rights, interests, equity and assets of Coinify ApS and its direct and indirect subsidiaries;</li> <li>• all Money Transmitter Licenses;</li> <li>• Seller's accounts receivable, and other amounts or Liabilities owing, from its Affiliates;</li> <li>• (i) all Seller Plans and assets of all Seller Plans that do not constitute Acquired Coins and (ii) personnel records relating to employees of Seller and Holdings;</li> <li>• all information and Personal Information related to individual consumers that is not Acquired User Data, including any Personal Information that is subject to the GDPR or collected from natural persons with addresses outside of the United States;</li> <li>• the 3AC Loan;</li> <li>• all VGX Token Smart Contracts; and</li> <li>• the properties, rights, interests and assets set forth on Schedule 1.2(s).</li> </ul> <p><b>See Binance US Purchase Agreement, § 1.2.</b></p>
<b>Assumed Liabilities</b>	<ul style="list-style-type: none"> <li>• all Liabilities and obligations of Seller under the Assigned Contracts to the extent such Liabilities arise from and after the Closing or relate to events, facts and circumstances first existing after the Closing;</li> <li>• all cure costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned</li> </ul>

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	<p>Contracts (the “Cure Costs”);</p> <ul style="list-style-type: none"> <li>all Liabilities arising out of the conduct of the business or the ownership of the Acquired Assets, in each case, solely by Purchaser from and after the Closing Date and to the extent such Liabilities arise from events, facts and circumstances first existing after the Closing Date;</li> <li>all Liabilities for Taxes with respect to the Acquired Assets for any taxable period (or portion thereof) beginning after the Closing Date allocable to Purchaser in accordance with Section 9.3(d);</li> <li>all Liabilities relating to all Transfer Taxes; and</li> <li>all Liabilities set forth on Schedule 1.3(f);</li> </ul> <p><u>provided, however</u>, that whether or not any Liability for Taxes is an Assumed Liability shall be governed solely by Section 1.3(d) and Section 1.3(e).</p> <p><b>See Binance US Purchase Agreement, § 1.3.</b></p>
<b>Excluded Liabilities</b>	<p>Any Liabilities of, or Action against, Seller or any of its Affiliates or relating to the Acquired Assets, the Excluded Assets or the business and operations of Seller and its Affiliates, of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on or prior to the Closing Date or arising thereafter, including as a result of any act, omission, or circumstances taking place prior to the Closing, other than the Assumed Liabilities, including the following:</p> <ul style="list-style-type: none"> <li>all Liabilities (i) existing prior to the filing of the Bankruptcy Case that are subject to compromise under the Bankruptcy Code and (ii) to the extent not otherwise expressly assumed herein (including in the Commercial Covenants), incurred subsequent to the filing of the Bankruptcy Case and prior to the Closing;</li> <li>all Liabilities related to (i) customer accounts of Seller or its Affiliates (including Voyager User Accounts), except for those obligations of Purchaser expressly set forth in the Commercial Covenants and (ii) commercial payables or amounts owing by Seller or its Affiliates, including to any software vendors;</li> <li>all Liabilities for Taxes (i) with respect to the Acquired Assets for any Pre-Closing Tax Period allocable to Seller in accordance with Section 9.3(d); (ii) of Seller and their Affiliates for any taxable period; or (iii) arising from or in connection with an Excluded Asset; and</li> <li>all Liabilities resulting from Seller’s or any of its Affiliates’ breach of, violation of, or non-compliance with the provisions of any Laws relating to the ownership or operation of their respective businesses, the Acquired Assets and the Excluded Assets or the Transactions, including any bulk transfer Laws or similar Laws of any jurisdiction in connection with the Transactions; and</li> <li>all Successor Liabilities, including with respect to any investigation or other Action against, concerning or otherwise with respect to Seller, its business or its assets.</li> </ul>

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<p><b>Conditions Precedent to Obligations of Purchaser and Seller</b></p>	<p><i>See Binance US Purchase Agreement, § 1.4.</i></p> <ul style="list-style-type: none"> <li>there shall be no Law or Order (including any temporary restraining order or preliminary or permanent injunction) in effect restraining, enjoining, making illegal or otherwise prohibiting the Transactions;</li> <li>the Bankruptcy Court shall have entered the Agreement Order, which Agreement Order shall (i) be in form and substance reasonably acceptable to Purchaser, (ii) comply in all respects with Section 5.1(b), and (iii) be a Final Order; and</li> <li>the Bankruptcy Court shall have entered the Confirmation Order, in form and substance, solely with respect to matters relating to the Agreement or the Transactions, reasonably acceptable to Purchaser, confirming a Plan in form and substance, solely with respect to matters relating to the Agreement or the Transactions, reasonably acceptable to Purchaser, and the Confirmation Order shall be a Final Order.</li> </ul> <p><i>See Binance US Purchase Agreement, § 7.1.</i></p>
<p><b>Conditions Precedent to Obligations of Purchaser</b></p>	<ul style="list-style-type: none"> <li>(i) the representations and warranties of Seller set forth in Article III (in each case, other than the Fundamental Representations and the representations and warranties set forth in Section 3.16(a)) shall be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date, except (x) that representations and warranties that are made as of a specified date need be so true and correct only as of such date and (y) to the extent the failure of such representations and warranties to be true and correct as of such dates has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided that for purposes of the immediately preceding clause (i), the qualifications as to materiality and Material Adverse Effect contained in such representations and warranties shall not be given effect;</li> <li>(ii) the representations and warranties set forth in Section 3.1(a) (Organization and Qualification), Section 3.2 (Authorization of Agreement), Section 3.3(a)(i) (Conflicts; Consents), Section 3.6(a) (Exclusive Ownership), and Section 3.14 (Brokers) (collectively, the “Fundamental Representations”) shall be true and correct in all but de minimis respects as of the Closing Date as though made on and as of the Closing Date, except that such Fundamental Representations that are made as of a specified date need be true and correct in all but de minimis respects only as of such date; and (iii) the representations and warranties set forth in Section 3.16(a) shall be true and correct in all respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date;</li> <li>Seller shall not have materially breached any of the covenants required to be performed or complied with by Seller under the Agreement on or prior to the Closing; provided that notwithstanding the foregoing, Seller shall have performed or caused to be performed, in all respects, all of the obligations and covenants required by Section 6.15(a) and (b); and</li> <li>Seller shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 2.4.</li> </ul> <p><i>See Binance US Purchase Agreement, § 7.2.</i></p>
<p><b>Conditions Precedent to</b></p>	<ul style="list-style-type: none"> <li>the representations and warranties made by Purchaser in Article IV shall</li> </ul>

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<b>Obligations of Seller</b>	<p>be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except (x) that representations and warranties that are made as of a specified date need be so true and correct only as of such date and (y) where the failure of such representations or warranties to be so true and correct has not and would not, individually or in the aggregate, reasonably be expected to prevent or materially impair or delay the ability of Purchaser to consummate the Transactions; provided that for purposes of Section 7.3(a), the qualifications as to materiality, material adverse effect and words of similar import contained in such representations and warranties shall not be given effect;</p> <ul style="list-style-type: none"> <li>• Purchaser shall not have materially breached any of the covenants required to be performed or complied with by Purchaser under the Agreement on or prior to the Closing; and</li> <li>• Purchaser shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 2.5.</li> </ul> <p><b>See Binance US Purchase Agreement, § 7.3.</b></p>
<b>Means of Implementation</b>	<ul style="list-style-type: none"> <li>• The Binance US Transaction shall be implemented and effectuated through a chapter 11 plan.</li> </ul> <p><b>See Binance US Purchase Agreement, §§ 5.3, 5.5.</b></p>
<b>Milestones</b>	<p>The Agreement may be terminated at any time prior to the Closing by written notice from the Purchaser to the Seller if, among other things:</p> <ul style="list-style-type: none"> <li>• the Agreement Order is not entered by January 6, 2023;</li> <li>• the Plan Solicitation Motion and the Amended Disclosure Statement are not filed with the Bankruptcy Court by December 21, 2022;</li> <li>• the Plan Solicitation Order is not entered by January 6, 2023;</li> <li>• the Confirmation Order is not entered by March 1, 2023;</li> <li>• Seller or any of the other Debtors file any motions, pleadings, notices or other documents with the Bankruptcy Court in material breach of Section 5.7;</li> <li>• Seller enters into one or more Alternative Transactions with one or more Persons other than Purchaser, or the Bankruptcy Court approves an Alternative Transaction other than with Purchaser;</li> <li>• Seller has delivered a Higher Offer Determination Notice to Purchaser;</li> <li>• Seller or its Affiliates or Advisors have committed a breach of Section 5.1(a); or</li> <li>• Seller or its Affiliates or Advisors have committed a breach of, Section 5.2; provided that (without modifying Purchaser's rights to terminate the Agreement under any other Section of the Agreement) Purchaser shall not be entitled to terminate the Agreement pursuant to Section 8.1(i)(ix) following entry of the Agreement Order by the Bankruptcy Court.</li> </ul> <p><b>See Binance US Purchase Agreement, §§ 5.3 and 8.1.</b></p>
<b>No-Shop</b>	<ul style="list-style-type: none"> <li>• From and following the execution and delivery of the Agreement by Seller, Seller and its Affiliates shall not, and shall not permit their respective Advisors or Affiliates to, (i) initiate contact with, or solicit or encourage</li> </ul>

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	<p>submission of any inquiries, proposals or offers by, any Person (other than Purchaser, its Affiliates and its and their respective Advisors) with respect to an Alternative Transaction, (ii) engage in, continue or otherwise participate in any discussions or negotiations regarding an Alternative Transaction or that could reasonably be expected to lead to an Alternative Transaction, (iii) enter into any confidentiality agreement with respect to, or provide any non-public information or data to any Person relating to, any Alternative Transaction, or (iv) otherwise agree, authorize or commit to do any of the foregoing; provided that, notwithstanding the foregoing, from and after entry of the Agreement Order, Seller may take the actions set forth in clauses (ii) and (iii) above if (A) Seller has received a written, bona fide offer, proposal or indication of interest to engage in an Alternative Transaction (an “Acquisition Proposal”) from any Person after the date of the Agreement that did not result from Seller’s breach of Section 5.2(a), and (B) the board of directors (or similar governing body) of Seller determines in good faith, after consultation with its financial advisor and outside legal counsel, that such Acquisition Proposal constitutes or is reasonably likely to lead to a Higher and Better Offer and that failure to take such actions would violate the directors’ fiduciary duties under applicable Law; provided further that if the Closing has not occurred prior to the Outside Date unless the failure of the Closing to have occurred by the Outside Date was caused by Seller’s failure to perform any of its obligations under the Agreement, and there is no Back-up Bidder (as defined in the Bidding Procedures Order) or the agreement with the Back-up Bidder has terminated in accordance with its terms, then Section 5.2(a) shall automatically terminate and be of no further force and effect as of such date. Until entry of the Agreement Order, Seller shall promptly (but in any event within twenty-four (24) hours) provide written notice to Purchaser of any breach of Section 5.2(a).</p> <ul style="list-style-type: none"> <li>• Seller shall promptly (but in any event within twenty-four (24) hours) give written notice to Purchaser if (i) any inquiries, proposals or offers with respect to an Alternative Transaction or that could reasonably be expected to lead to an Alternative Transaction are received, (ii) any non-public information or data concerning Seller or its Affiliates or access to Seller’s or its Affiliates’ properties, books or records in connection with any Alternative Transaction or any inquiry, proposal or offer that could reasonably be expected to lead to an Alternative Transaction is requested, or (iii) any discussions or negotiations relating to an Alternative Transaction or any inquiry, proposal or offer that could reasonably be expected to lead to an Alternative Transaction are sought to be engaged in or continued by, from or with Seller, its Affiliates or any of its or their respective Advisors, as the case may be. Such notice shall set forth the name of the applicable Person making such inquiry, the material terms and conditions of any proposed Alternative Transaction (including, if applicable, correct and complete copies of any proposed agreements, inquiries, proposals or offers or, where no such copies are available, a reasonably detailed written description thereof) and the status of any such discussions or negotiations. Seller shall thereafter keep Purchaser reasonably informed, on a reasonably prompt basis, of the status of any discussions or negotiations with respect thereto. Until entry of the Agreement Order, Seller shall promptly (but in any event within twenty-</li> </ul>



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	<p>four (24) hours) provide written notice to Purchaser of any breach of Section 5.2(b).</p> <ul style="list-style-type: none"> <li>• Seller (i) shall promptly (and in any event within twenty-four (24) hours) give notice to Purchaser upon a determination by Seller or its board of directors (or comparable governing body) that any Acquisition Proposal received from any Person after the date of the Agreement that did not result from Seller's breach of Section 5.2(a) constitutes a Higher and Better Offer (a "Higher Offer Determination Notice") and (ii) may cause or permit Seller or any of the other Debtors to enter into a definitive agreement with respect to such Acquisition Proposal; provided that (A) Seller and its board of directors (or comparable governing body) may only make such determination described in clause (i) of Section 5.2(c) if, prior to the determination that such Acquisition Proposal constitutes a Higher and Better Offer, Seller negotiates, and causes its representatives to negotiate, with Purchaser in good faith (to the extent Purchaser and its representatives desire to negotiate) during such three (3) Business Day period to amend the terms and conditions of the Agreement and, no earlier than the end of such three (3) Business Day period, the board of directors (or comparable governing body) of Seller determines in good faith (after consultation with its financial advisor(s) and outside legal counsel), after giving effect to such proposed amendments to the terms and conditions of the Agreement, that such Acquisition Proposal still constitutes a Higher and Better Offer (provided further that if any material amendment is made to such Acquisition Proposal, such Acquisition Proposal shall be subject again (but only once again) to the foregoing, except that references to three (3) Business Days shall be deemed to be two (2) Business Days, and whatever the result of the second instance of the foregoing, Seller shall not be required to undertake the foregoing again before making a determination that such Acquisition Proposal constitutes a Higher and Better Offer and, if applicable, terminating the Agreement), and (B) Seller and its board of directors (or comparable governing body) may only take such action described in clause (ii) of Section 5.2(c) if the board of directors (or comparable governing body) of Seller determines in good faith (after consultation with its outside legal counsel) that the failure to take such action would violate with its fiduciary duties under applicable Law.</li> </ul> <p><b>See Binnace US Purchase Agreement, § 5.2.</b></p>
<b>Good-Faith Deposit</b>	<ul style="list-style-type: none"> <li>• Purchaser has made, on the date thereof, or will make on the first Business Day following the date thereof, an earnest money deposit in the amount equal to \$10,000,000.00 by wire transfer of immediately available funds for deposit into an escrow account. Subject to Section 2.2(b) and Section 2.2(c), the Deposit and any received investment income, if any, shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of Seller or Purchaser and shall be applied against payment of the Purchase Price on the Closing Date. Seller hereby acknowledges and agrees that the Deposit qualifies as the deposit required pursuant to the Bidding Procedures Order.</li> <li>• If the Agreement has been validly terminated (i) by Seller pursuant to Section 8.1(d) or Section 8.1(f), (ii) by Purchaser pursuant to Section 8.1(c), in circumstances where Seller would be entitled to terminate the Agreement pursuant to Section 8.1(d) or Section 8.1(f), or (iii) by Seller</li> </ul>

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	<p>pursuant to Section 8.1(g) in connection with and following any Purchaser Development and not in connection with a Higher and Better Offer (each of (i), (ii), and (iii), a “Purchaser Default Termination”), then within three (3) Business Days after the date of such termination, the Parties shall execute any instructions necessary to permit the Escrow Agent to disburse the Deposit together with all received investment income, if any, to Seller.</p> <ul style="list-style-type: none"> <li>• If the Agreement has been validly terminated by either Party, other than as contemplated by Section 2.2(b), then the Deposit, together with all received investment income, if any, shall be returned to Purchaser within three (3) Business Days after such termination, and, at Purchaser’s request, Seller shall execute any instructions necessary to permit the Escrow Agent to disburse the Deposit together with all received investment income, if any, to Purchaser.</li> <li>• If the Closing occurs, the Deposit shall be transferred to Seller.</li> </ul> <p><b>See Binance US Purchase Agreement, § 2.2.</b></p>
<b>Reverse Termination Fee</b>	<p>In the event that (a) the conditions set forth in Sections 7.1(b), 7.1(c), and 7.2 have been satisfied or duly waived and (b) (i) the Agreement is validly terminated in accordance with Section 8.1(b) or Section 8.1(c), (ii) Purchaser fails to consummate the Closing by the Outside Date or the Extended Outside Date, as applicable, as a result of the failure of the conditions set forth in Section 7.1(a), or (iii) the Agreement is terminated pursuant to Section 8.1(g) in connection with and following a Purchaser Development and not in connection with a Higher and Better Offer, then, in any such case, within three (3) Business Days following such valid termination the Deposit (including all received investment income, if any) shall be released to Seller (such release, which, for the avoidance of doubt, shall be equal to and shall not exceed \$10,000,000 in the aggregate, the “Reverse Termination Fee”).</p> <p><b>See Binance US Purchase Agreement, § 8.3.</b></p>
<b>Expense Reimbursement by Purchaser to Seller</b>	<p>Purchaser shall (i) at the Closing bear as a component of the Purchase Price pursuant to Section 2.1(a), without duplication, the Seller Expenses or (ii) if the Agreement is validly terminated in accordance with its terms, pay to Seller, within three (3) Business Days following such termination, cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by Seller in an amount equal to the Seller Expenses; provided that notwithstanding anything to the contrary herein, (A) in no event shall the aggregate amount of Seller Expenses payable by Purchaser exceed the Seller Expense Cap, (B) any fees and expenses (including reasonable and documented out-of-pocket financial advisor and legal fees, expenses and disbursements) incurred by Seller or any of its Affiliates, or otherwise relating to the activities or operations of Seller or any of its Affiliates, on or prior to the Seller Expense Start Date shall not constitute Seller Expenses, and (C) (x) if the Closing or the termination of the Agreement occurs on or prior to the Seller Expense Start Date, (y) if the Agreement is terminated pursuant to (1) Section 8.1(b) or Section 8.1(c) by Purchaser, or by Seller in circumstances where Purchaser would be entitled to terminate the Agreement pursuant to Section 8.1(e), or (2) Section 8.1(e), Section 8.1(g), Section 8.1(h) or Section 8.1(i), or (z) the Closing does not occur on or prior to the Seller Expense Start Date due to any act or omission by Seller or any of its Affiliates or any material breach of the Agreement by Seller, then in each case the Seller Expenses shall be zero (0).</p> <p><b>See Binance US Purchase Agreement, §§ 6.21, 8.1.</b></p>



Agreement Provision	Summary Description <sup>8</sup>
<b>Expense Reimbursement by Seller to Purchaser</b>	<p>If the Agreement is terminated (i) by Seller pursuant to Section 8.1(c), in circumstances where Purchaser would be entitled to terminate the Agreement pursuant to Section 8.1(e), or (ii) pursuant to Section 8.1(e), Section 8.1(g), Section 8.1(h) or Section 8.1(i)(ix), then Seller shall pay to Purchaser, within three (3) Business Days following such termination, cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by Purchaser in an amount equal to the Purchaser Expenses; provided that notwithstanding anything to the contrary herein, in no event shall the aggregate amount of Purchaser Expenses payable by Seller hereunder exceed \$5,000,000; <u>provided further</u> that if the Agreement is validly terminated by Seller pursuant to Section 8.1(g) (x) in order for Seller to pursue a Liquidation as a result of and following any Effect with respect to Purchaser’s business, financial condition, operations, assets, management, employees, compliance, or liabilities, taken as a whole, or any Effect with respect to Purchaser’s Affiliates that has an Effect on Purchaser’s business, financial condition, operations, assets, management, employees, compliance, or liabilities, taken as a whole, that, individually or in the aggregate with all other such Effects, would reasonably be expected to (1) prevent or materially impair or materially delay the ability of Purchaser to consummate the Transactions in accordance herewith or (2) materially and adversely affect the Users, Eligible Creditors, or the Acquired Coins on the Binance.US Platform, including following the Closing, as compared to users and Coins on the Binance.US Platform as of the date hereof, and (y) such termination was not effected (1) in connection with a Higher and Better Offer or (2) because the estimated proceeds from such Liquidation are or would reasonably be expected to be greater than the Closing Date Payment (plus the fair market value of any Acquired Coins or any proceeds therefrom, in each case, as determined at the time Seller commences such Liquidation), then no Purchaser Expenses shall be payable.</p> <p><b>See Binance US Purchase Agreement, §§ 6.22, 8.1.</b></p>
<b>Fiduciary Out</b>	<p>Nothing in the Agreement, or any document related to the Transactions, will require Seller or any of its managers, officers or members, in each case, in their capacity as such, to take any action, or to refrain from taking any action, to the extent inconsistent with their fiduciary obligations; provided, however, that no such action or inaction shall be deemed to prevent Purchaser from exercising any termination rights it may have as a result of such action or inaction.</p> <p><b>See Binance US Purchase Agreement, § 10.19.</b></p>

### III. Rebalancing of the Debtors’ Cryptocurrency.

29. The Debtors hold a significant amount of cryptocurrency across a diverse portfolio of coins. To effectuate the Binance US Transaction or the Toggle Transaction, the Debtors will need to “rebalance” their cryptocurrency portfolio (*i.e.*, execute trades of various types of cryptocurrency to ensure that the proper types of coins are available for distribution to each customer) on the Debtors’ platform. Accordingly, the Debtors seek authority to execute any

rebalancing to effectuate the Binance US Transaction or the Toggle Transaction pursuant to the terms of the Binance US Purchase Agreement.

### **Basis for Relief**

#### **I. The Debtors' Entry into the Binance US Purchase Agreement Should Be Approved as an Exercise of Sound Business Judgment.**

30. The Court may authorize the Debtors to enter into the Binance US Purchase Agreement pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors need only show a legitimate business justification to enter into the Binance US Purchase Agreement. *See, e.g., Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts generally will not entertain objections to the debtor’s conduct.”). When a valid business justification exists, the law vests the debtor’s decision with a strong presumption ““that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.”” *In re GSC, Inc.*, 453 B.R. 132, 174 (Bankr. S.D.N.Y. 2011) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Accordingly, parties challenging a debtor’s decision must make a showing of “bad faith, self-interest or gross negligence.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations omitted).

31. In addition, the Court may also authorize the entry into the Binance US Purchase Agreement based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate

to carry out the provisions of this title.” Under section 105(a), courts may authorize actions that are essential to the continued operation of a debtor’s business. *See In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996).

32. The relief requested by this Motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. The Binance US Purchase Agreement represents the most efficient and appropriate means of maximizing recoveries to stakeholders on an expedited timeline in light of the extraordinary circumstances in these cases.

**A. A Sound Business Purpose Exists for Entry into the Binance US Purchase Agreement.**

33. The Debtors have concluded that entry into the Binance US Purchase Agreement, which outlines and governs the terms of the Binance US Transaction, is in the best interest of their chapter 11 estates and is supported by a number of sound business reasons.

- **First**, the Debtors believe that the Binance US Transaction will maximize the value of the Debtors’ assets because the Purchase Price offers significantly more value and less risk than the Acquired Assets would have on a stand-alone basis or through any other bids received by the Debtors.
- **Second**, the Debtors believe that, as a result of the marketing efforts that have been undertaken, the highest and best offer has been obtained and will provide maximum value to the Debtors under the current circumstances.
- **Third**, the Sale was subject to a public and competitive process, enhancing the Debtors’ ability to receive the highest or otherwise best value for their assets. Consequently, the Sale has been subject to a “market check” that, in the Debtors’ reasonable business judgment, was the best means for establishing whether a fair and reasonable price is being paid. *See, e.g., In re Trans World Airlines, Inc.*, No. 01-00056, 2001 WL 1820326 at \*4 (Bankr. D. Del. 2001) (although a “section 363(b) sale transaction does not require an auction procedure,” “[t]he auction procedure has developed over the years as an effective means for producing an arm’s length fair value transaction.”).
- **Fourth**, the Seller engaged in hard-fought, arm’s length negotiations with Binance US over the terms of the Binance US Purchase Agreement, which includes protections for the Seller including (i) a \$10 million good faith deposit

paid by Binance US to the Seller (section 2.2 of the Binance US Purchase Agreement), (ii) reimbursement by Binance US to the Seller of up to \$15 million in expenses subject to the terms of the Binance US Purchase Agreement (section 6.21 of the Binance US Purchase Agreement) and (iii) a \$10 million Reverse Termination Fee owed by Binance US to the Seller, subject to the terms of the Binance US Purchase Agreement (section 8.3 of the Binance US Purchase Agreement).

- ***Fifth***, entry into the Binance US Purchase Agreement allows the Debtors to lock in the terms of the Binance US Transaction now, subject to confirmation of the Plan, which is particularly important given the continued volatility of cryptocurrency markets.

34. The Debtors submit that the Binance US Transaction contemplated under the Binance US Purchase Agreement constitutes the highest or otherwise best offer for the Acquired Assets and will provide the Debtors the best path forward to maximizing value for their estates and, ultimately, providing a recovery to creditors on an efficient timeline. As such, the Debtors believe that entry into the Binance US Purchase Agreement is a valid and sound exercise of the Debtors' business judgment.

**B. Adequate and Reasonable Notice of Entry Into the Binance US Purchase Agreement Has Been Provided.**

35. Although the Debtors do not seek approval of the Binance US Transaction by this Motion, notice of entry into the Binance US Purchase Agreement was adequate and reasonable. Further, the Debtors' marketing process and the notice provided through this Motion constitute adequate and reasonable notice of the Binance US Transaction. The Debtors undertook a very public and lengthy Auction that spanned multiple weeks and received late interest from parties. The Debtors' creditors and parties-in-interest were apprised of the marketing process throughout these chapter 11 cases. Creditors and parties-in-interest were also aware of the very public FTX collapse and the Debtors' need to pursue an alternative transaction immediately. Further, parties-in-interest will have the opportunity to vote on and/or object to the Binance US Transaction through the Plan solicitation and confirmation process.

**C. The Purchase Price Contemplated in the Binance US Purchase Agreement Reflects a Fair Value Transaction.**

36. It is well-settled that, where there is a court-approved auction process, a full and fair price is presumed to have been obtained for the assets sold as the best way to determine value is exposure to the market. *See Bank of Am. Nat'l Trust & Sav. Ass'n. v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 457 (1999); *see also Trans World Airlines*, 2001 WL 1820326 at \*4. As discussed herein, the Debtors and their advisors conducted a thorough and extensive marketing process. Among other things, the Debtors have engaged in significant discussions with 90 interested parties, provided potential bidders with virtual data room access, including thousands of pages of business and financial diligence, hosted meetings with the Debtors' management team, held numerous conference calls and meetings with interested parties, considered alternative transaction structures, and otherwise taken all appropriate efforts to increase transaction value. The Debtors respectfully submit that this process maximized the number of bidders that participated in a competitive Auction process and subsequent thorough and robust negotiations following the FTX collapse, and, accordingly, provided the Debtors and their stakeholders with the best possible transaction.

**II. A Sound Business Purpose Exists for The Seller to Agree to the Purchaser Expenses Provision under the Binance US Purchase Agreement.**

37. Binance US insisted on the Purchaser Expenses provision as a condition to entering into the Binance US Purchase Agreement. However, the Purchaser Expenses are narrow and the Seller is only responsible to reimburse Binance US for its reasonable and documented out-of-pocket expenses of up to \$5 million in the event the Binance US Purchase Agreement is terminated (a) by the Seller if the closing has not occurred by the Outside Date or extended Outside Date, as applicable, in circumstances where Binance US would be entitled to terminate the Binance US Purchase Agreement for breach of the Binance US Purchase Agreement by the Seller, or

(b) pursuant to Section 8.1(e) (Seller breach), Section 8.1(g) (Seller exercise of the fiduciary out), Section 8.1(h) (dismissal or conversion of the chapter 11 cases to chapter 7, or if the automatic stay is lifted with respect to any Acquired Assets), or Section 8.1(i)(ix) (Seller breach of the “No Shop”); *provided* that if the Binance US Purchase Agreement is validly terminated by Seller pursuant to Section 8.1(g) (Seller exercise of the fiduciary out) (x) in order for Seller to pursue the Toggle Transaction as a result of and following any Effect with respect to Binance US’s business, financial condition, operations, assets, management, employees, compliance, or liabilities, taken as a whole, or any Effect with respect to Binance US’s Affiliates that has an Effect thereon that would reasonably be expected to (i) prevent or materially impair or materially delay the ability of Binance US to consummate the Binance US Transaction or (ii) materially and adversely affect the customers, creditors, or the acquired cryptocurrency on the Binance US platform, and (y) such termination was not caused by (i) the Debtors determination to pursue a higher and better offer from a third party or (ii) because the estimated proceeds from the Toggle Transaction are or would reasonably be expected to be greater than the consideration under the Binance US Transaction, then no Purchaser Expenses shall be payable. *See* Binance US Purchase Agreement, Section 6.22.

38. The potential for the Debtors to potentially be responsible for Purchaser Expenses was already contemplated by this Court’s Bidding Procedures Order. Moreover, bankruptcy courts routinely approve asset purchase agreements that contain similar bid protections that provide a benefit to the estates. *See, e.g., In re WorldSpace, Inc.*, 2010 WL 4739929, at \*4–5 (Bankr. D. Del. June 2, 2010) (approving the break-up fee in an asset purchase agreement for a variety of reasons, including that the break-up fee was reasonable and appropriate, essential to induce the buyer to enter the agreement, and entered into under the debtors’ compelling and sound business justification); *see also In re Genco Shipping & Trading Limited*, 509 B.R. 455, 465 (Bankr.

S.D.N.Y. 2014) (citing *In re Metaldyne Corp.*, 409 B.R. 661, 670 (Bankr. S.D.N.Y. 2009); *see also In re Integrated Res., Inc.*, 147 B.R. at 657–58 (to evaluate bid protections, courts should employ the business judgment rule, which proscribes judicial second-guessing of the corporate debtor’s actions taken in good faith, absent self-dealing and in the exercise of honest judgment); *In re Fin. News Network, Inc.*, 980 F.2d 165 (2d Cir. 1992); *Integrated Res., Inc.*, 147 B.R. at 659–60 (“Break-up fees are important tools to encourage bidding and to maximize the value of the debtor’s assets . . . . In fact, because the . . . corporation has a duty to encourage bidding, break-up fees can be **necessary** to discharge [such] duties to maximize value.” (emphasis added)); *See In re O’Brien Env’tl. Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999).

39. Further, the Purchaser Expenses under the Binance US Purchase Agreement constitute “actual and necessary costs and expenses of preserving the estate” entitled to administrative expense status and payment under sections 503(b) and 507(a)(2) of the Bankruptcy Code. 11 U.S.C. §§ 503(b)(1)(A) and 507(a)(2). Courts in this district have often granted relief similar to the relief requested herein. *See, e.g., In re Garrett Motion, Inc.*, Case No. 20-12212 (Bankr. S.D.N.Y. Mar. 12, 2021) (approving administrative expense priority to backstop fees and expenses); *In re SunEdison, Inc.*, Case No. 16-10992 (Bankr. S.D.N.Y. June 6, 2017) (same); *In re Roust Corp.*, Case No. 16-23786 (Bankr. S.D.N.Y. Jan. 10, 2017) (same); *In re K-V Discovery Solutions Inc.*, Case No. 12-13346 (Bankr. S.D.N.Y. June 7, 2013) (same). The facts and circumstances here warrant similar treatment.

40. The Court should rely on the business judgment standard when determining the appropriateness of the Purchaser Expenses. The Seller exhibited a sound exercise of its business judgment in agreeing to the Purchaser Expenses because Binance US is unwilling to enter into the Binance US Purchase Agreement and have its transaction subject to higher and better offers



without the protection of reimbursement of the expenses it incurred in setting a floor for other potential bidders. The risk of losing the Binance US Transaction due to the Seller's refusal to agree to the Purchaser Expenses significantly outweighs the cost associated with the Purchaser Expenses that are triggered under very limited circumstances.

41. In short, the proposed Purchaser Expenses are fair and reasonable under the circumstances because they constitute a "fair and reasonable percentage of the proposed purchase price" and are "reasonably related to the risk, effort, and expenses of the prospective purchaser." *In re Intergrated Res., Inc.*, 147 B.R. at 662 (quoting *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989)). Approval of the Purchaser Expenses is necessary for Binance US to enter into the Binance US Purchase Agreement and remain committed through the Debtors' plan solicitation and confirmation process, all during which the Debtors have the ability to exercise their fiduciary out should a higher or otherwise better offer be proposed. Accordingly, the Purchaser Expenses are an appropriate and crucial component of the Binance US Purchase Agreement and a prudent exercise of the Debtors' business judgment consistent with the legal standards this Court and other courts in this jurisdiction have established and recognized.

#### **Reservation of Rights**

42. Nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an admission as to the validity of any particular claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds, (c) a promise or requirement to pay any particular claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion, (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code,



(f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law, or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

### **Motion Practice**

43. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

### **Notice**

44. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the U.S. Trustee; (b) the Committee; (c) the lender under the Debtors' prepetition loan facility; (d) the United States Attorney's Office for the Southern District of New York; (e) the Internal Revenue Service; (f) the Toronto Stock Exchange; (g) the attorneys general in the states where the Debtors conduct their business operations; (h) all parties who have expressed a written interest in the Acquired Assets; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

### **No Prior Request**

45. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in this Motion and granting such other and further relief as is appropriate under the circumstances.

Dated: December 21, 2022  
New York, New York

*/s/ Joshua A. Sussberg*

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**KIRKLAND & ELLIS LLP**

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**Exhibit A**

**Proposed Form of Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER (I) AUTHORIZING ENTRY INTO THE  
BINANCE US PURCHASE AGREEMENT AND (II) GRANTING RELATED RELIEF**

Upon the Motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”): (i) authorizing entry into the Binance US Purchase Agreement and (ii) granting related relief; and the Debtors having determined, after an extensive marketing process, that BAM Trading Services Inc. d/b/a Binance.US (“Binance US” or the “Purchaser”) has submitted the highest or otherwise best bid for the Acquired Assets; and the Debtors having selected Binance US as the Winning Bidder pursuant to the Bidding Procedures Order; and upon adequate and sufficient notice of the Motion, all as more fully set forth in the Motion; and upon the First Day Declaration and the Tichenor Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, entered February 1, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

§§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY FOUND AND DETERMINED THAT:

**A.** The Debtors and the Purchaser negotiated the Binance US Purchase Agreement at arm's length and in good faith, without collusion, all within the meaning of section 363(m) of the Bankruptcy Code.

**B.** The Purchaser Expenses, as set forth in the Binance US Purchase Agreement, are: (1) commensurate to the real and substantial benefits conferred upon the Debtors' estates by the Purchaser; (2) reasonable and appropriate in light of the size and nature of the proposed sale contemplated by the Binance US Purchase Agreement, the commitments that have been made by the Purchaser, and the efforts that have been and will be expended by the Purchaser; and (3) necessary to induce the Purchaser to continue to pursue such sale and continue to be bound by the Binance US Purchase Agreement. The Purchaser Expenses are an essential inducement to, and condition of, the Purchaser's entry into, and continuing obligations under, the Binance US Purchase Agreement. Unless it is assured that the Purchaser Expenses will be available, the Purchaser is unwilling to be bound to the terms of the Binance US Purchase Agreement (including the obligation to maintain its committed offer in accordance with the terms of the Binance US

Purchase Agreement while such offer is subject to higher or otherwise better bids as contemplated by the Bidding Procedures). The Purchaser has provided a material benefit to the Debtors and their creditors by providing a baseline value, thereby increasing the likelihood that the value of the Acquired Assets will be maximized through the Debtors' sale process.

C. Accordingly, the Purchaser Expenses are (1) fair, reasonable and appropriate and designed to maximize value for the benefit of the Debtors' estates; and (2) an actual and necessary cost of preserving the Debtors' estates within the meanings of sections 503(b) and 507(a) of the Bankruptcy Code.

IT IS HEREBY ORDERED THAT:

**I. Notice of the Motion.**

1. Notice of the Hearing, the Motion, and the Debtors' entry into the Binance US Purchase Agreement, was timely, proper, and reasonably calculated to provide interested parties with timely and proper notice thereof, and no other or further notice of the Motion and the Hearing is, or shall be, required. The requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice. A reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

**II. Highest or Otherwise Best Offer.**

2. The Debtors' pre- and postpetition marketing process with respect to the Acquired Assets afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Acquired Assets. The transactions contemplated by the Binance US Purchase Agreement constitute the highest or otherwise best offer for the Acquired Assets, and the Debtors' determination that the terms of the Binance US Purchase Agreement constitute the highest or otherwise best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment; *provided* that nothing in this Order shall limit or

otherwise restrict in any way the Seller's rights and obligations under section 5.2 of the Binance US Purchase Agreement. Entry of this Order, including approval of the Seller's entry into, and performance under, the Binance US Purchase Agreement, is in the best interests of the Debtors, their estates, creditors, and all other parties in interest.

### **III. General Provisions.**

3. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to these chapter 11 cases pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

4. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Court at the Hearing or by stipulation filed with the Court, and all reservations of rights included in such objections or otherwise, are hereby denied and overruled on the merits with prejudice.

5. The Motion is granted as set forth herein.

6. Voyager Digital, LLC, as seller under the Binance US Purchase Agreement, is authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to enter into the Binance US Purchase Agreement and perform its obligations under the Binance US Purchase Agreement other than those obligations to be performed at or after the consummation of the Sale, which obligations the Debtors will seek approval of in connection with confirmation of a chapter 11 plan. The Seller and Purchaser are granted all rights and remedies provided to them under the Binance US Purchase Agreement.

7. The Binance US Purchase Agreement shall be binding and specifically enforceable against the parties thereto in accordance with its terms, including, without limitation, Section 5.2

(the “No-Shop” provision) and, as applicable, those additional obligations set forth in Article V (Bankruptcy Court Matters) and Article VI (Covenants and Agreements) of the Binance US Purchase Agreement.

8. The Debtors are authorized, but not directed, to enter into non-material amendments to the Binance US Purchase Agreement from time to time as necessary, subject to the terms and conditions set forth in the Binance US Purchase Agreement, and without further order of the Court.

9. The Seller is authorized to satisfy the Purchaser Expenses pursuant to the terms and conditions set forth in the Binance US Purchase Agreement, and the Purchaser Expenses, as set forth in the Binance US Purchase Agreement, are approved in their entirety. The Purchaser Expenses provisions in the Binance US Purchase Agreement and this Order shall be binding on the Seller, its successors and assigns, and shall survive the termination of the Binance US Purchase Agreement, appointment of a chapter 11 trustee or similar fiduciary, and dismissal or conversion of the chapter 11 cases; *provided, however*, that the obligation to pay or honor the Purchaser Expenses shall be subject to the terms and conditions of the Binance US Purchase Agreement. The Purchaser Expenses shall be entitled to administrative expense status under sections 503(b) and 507(a)(2) of the Bankruptcy Code.

10. The Purchaser is obligated to satisfy the terms and conditions of the Binance US Purchase Agreement in its entirety, including Section 2.2 (Good Faith Deposit), Section 6.21 (Seller Expenses), and Section 8.3 (the Reverse Termination Fee).

11. To the extent the automatic stay provisions of section 362 of the Bankruptcy Code would otherwise apply, such provisions are vacated and modified to the extent necessary to permit the parties to the Binance US Purchase Agreement to exercise their termination rights thereunder in accordance with its terms, and deliver any notice contemplated thereunder, in each case, without



further order of the Court.

12. The Debtors are authorized to rebalance their cryptocurrency portfolio subject to the terms of the Binance US Purchase Agreement.

13. Nothing in this Order, the Binance US Purchase Agreement, the Plan, or any order confirming the Plan discharges, releases, impairs or otherwise precludes: (i) any liability to any governmental unit as defined in 11 U.S.C. § 101(27) (“Governmental Unit”) that is not a “claim” within the meaning section 101(5) of the Bankruptcy Code; (ii) any claim of any Governmental Unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of the closing of the Sale; or (iii) any liability to a Governmental Unit on the part of any Person other than the Debtors. Nor shall anything in this Order or related documents enjoin or otherwise bar a Governmental Unit from asserting or enforcing any liability described in the preceding sentence. Notwithstanding anything to the contrary, nothing in this paragraph 13 shall be construed as a determination as to any liability or claim owing to a Governmental Unit or whether any Governmental Unit is subject to the automatic stay under section 362 of the Bankruptcy Code or limits, lifts or otherwise modifies the automatic stay under section 362 of the Bankruptcy Code.

14. Further, nothing in this Order, the Binance US Purchase Agreement, the Plan, or any order confirming the Plan authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law. Nothing in this Order, the Binance US Purchase Agreement, the Plan, or any order confirming the Plan shall relieve any entity from any otherwise applicable obligation to address or comply with information requests or inquiries from any

Governmental Unit. Nothing in this Order, the Binance US Purchase Agreement, the Plan, or any order confirming the Plan shall affect any valid setoff or recoupment rights of any Governmental Unit. Nothing in this Order, the Binance US Purchase Agreement, the Plan, or any order confirming the Plan divests any state tribunal of any otherwise applicable jurisdiction it may have under police or regulatory law. Nothing in this Order, the Binance US Purchase Agreement, the Plan, or any order confirming the Plan, shall be construed as a determination of whether the automatic stay applies to this paragraph 14 or limits, lifts or otherwise modifies the automatic stay under section 362 of the Bankruptcy Code.

15. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

16. The Debtors shall maintain copies of their books and records as set forth in the Plan. Nothing in this Order shall affect the obligations of the Debtors and/or any transferee or

custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

17. Notwithstanding anything to the contrary in the Motion, this Order, or any findings announced at the Hearing, nothing in the Motion, this Order, or announced at the Hearing constitutes a finding under the federal securities laws as to whether crypto tokens or transactions involving crypto tokens are securities, and the right of the United States Securities and Exchange Commission to challenge transactions involving crypto tokens on any basis is expressly reserved.

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

19. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

21. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

22. The failure to specifically include any particular provision of the Binance US Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that entry into the Binance US Purchase Agreement be authorized and approved in its entirety.

23. The Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Binance US Purchase Agreement, all amendments thereto and any waivers and consents thereunder, and to adjudicate,

if necessary, any and all disputes concerning or relating in any way to interpretation, implementation, or enforcement of the Binance US Purchase Agreement, including, but not limited to, any matter, claim, or dispute arising from or relating to the Binance US Purchase Agreement, and any purported termination of the Binance US Purchase Agreement pursuant to paragraph 11 of this Order.

24. To the extent that this Order is inconsistent with the Motion, the terms of this Order shall govern.

Dated: \_\_\_\_\_, 2022  
New York, New York

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THE HONORABLE MICHAEL E WILES  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Binance US Purchase Agreement**

**VOYAGER DIGITAL, LLC, AS SELLER.**

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AGREEMENT

EXHIBIT B FORM OF TRADEMARK AND DOMAIN NAME ASSIGNMENT AGREEMENT

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”), dated as of December 18, 2022, is made by and between BAM Trading Services Inc. d/b/a Binance.us, a Delaware corporation (“Purchaser”), and Voyager Digital, LLC, a Delaware limited liability company (“Seller”). Purchaser and Seller are each referred to herein individually as a “Party” and collectively as the “Parties.” Capitalized terms used herein shall have the meanings set forth herein or in Article XI.

WHEREAS, on July 5, 2022 (the “Petition Date”), Seller, together with Voyager Digital Ltd., a Canadian corporation and Seller’s indirect equityholder (“Parent”), and Voyager Digital Holdings, Inc., a Delaware corporation and Seller’s direct equityholder (“Holdings” and, collectively with Seller and Parent, the “Debtors”), filed voluntary petitions for relief (collectively, the “Petitions”) under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), to be jointly administered for procedural purposes (collectively, the “Bankruptcy Case”); and

WHEREAS, Purchaser desires to purchase the Acquired Assets and assume the Assumed Liabilities from Seller, and Seller desires to sell, convey, assign, and transfer to Purchaser the Acquired Assets together with the Assumed Liabilities, in a sale authorized by the Bankruptcy Court pursuant to, inter alia, sections 105, 363, 365, 1129, 1141 and 1142 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court, all on the terms and subject to the conditions set forth in this Agreement, the Agreement Order, the Plan and the Confirmation Order.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants, and agreements set forth herein, intending to be legally bound hereby, Purchaser and Seller hereby agree as follows.

## ARTICLE I

### PURCHASE AND SALE OF THE ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

1.1 Purchase and Sale of the Acquired Assets. Pursuant to sections 105, 363, 365, 1129, 1141 and 1142 of the Bankruptcy Code, on the terms and subject to the conditions set forth herein and in the Agreement Order, the Plan and the Confirmation Order, at the Closing, Seller shall sell, transfer, assign, convey, and deliver to Purchaser, and Purchaser shall purchase, acquire, and accept from Seller, all of Seller’s right, title and interest in and to, as of the Closing, the Acquired Assets, free and clear of all Encumbrances other than Permitted Post-Closing Liens; provided, in respect of the Acquired Coins, Purchaser shall acquire all of Seller’s right, title and interest in and to the Acquired Coins free and clear of all Encumbrances (including Encumbrances implemented through “smart contracts” or other technological means), except that with respect to any ETH Coins that are Staked Coins as of the date hereof and cannot be unstaked as of the Closing, such ETH Coins shall be subject to such staking. “Acquired Assets” means all of the properties, rights and interests in and to only the following assets of Seller as of the Closing, wherever located and

whether or not required to be reflected on a balance sheet prepared in accordance with IFRS, including any such properties, rights and interests in any assets of the following types acquired by Seller after the date hereof and prior to the Closing:

(a) all Acquired Coins, together with all information regarding the underlying networks and smart contracts to which such Acquired Coins are subject;

(b) to the extent permissible under applicable Law, (1) all (i) information and Personal Information (including, for the avoidance of doubt, names, account numbers, social security numbers, passports (including passport numbers), drivers licenses (including driver license numbers), “liveness check” selfies, email addresses, mailing addresses, phone numbers, contact information, usernames, user IDs, passwords, and any Personal Information collected for purposes of KYC Procedures) related to (A) all active and inactive accounts of Users (“Voyager User Accounts”) and (B) any other consumers located or having a home address in the United States from whom Personal Information was collected by Seller; (ii) information that has been anonymized, pseudonymized, or otherwise de-identified; (iii) data contained in the Seller Statement or the Post-Bankruptcy Statement; (iv) information relating to Voyager User Accounts that must be obtained and retained by Purchaser or any of its Affiliates for regulatory or legal purposes; and (v) any encryption key, passcode or cypher required to access any of the foregoing (collectively, the “Acquired User Data”), and (2) all other information and data relating to the other categories of Acquired Assets, the Voyager Platform, other than Acquired User Data (clauses (1) and (2), collectively, “Acquired Information”);

(c) all rights, causes of action, claims (including, for the avoidance of doubt, any claims and causes of action arising under Chapter 5 of the Bankruptcy Code), counterclaims, defenses, credits, rebates, demands, allowances, refunds (other than Tax refunds or Tax attributes, in each case, to the extent enumerated in Section 1.2(i)), causes of action, rights of set off, rights of recovery, rights of recoupment or rights under or with respect to express or implied guarantees, warranties, representations, covenants or indemnities of any kind, in each case that Seller may have against any User located or having a home address in the United States solely to the extent that such claim or cause of action is against a User in such Person’s capacity as a User (in each case, excluding (i) Retained Avoidance Actions, (ii) claims, causes of action or other rights against Seller or any of its Affiliates, or (iii) any of the foregoing to the extent relating to any Credit Matter) (collectively, “Acquired Voyager Claims”);

(d) other than VGX Token Smart Contracts, all Intellectual Property owned by Seller or otherwise used or held for use by or on behalf of Seller in connection with the operation of its businesses, including all Business Software (in source code and object code form), any Bedrock source code and other IT Systems owned by Seller and required to operate the Voyager Platform, all Business Accounts (provided that Purchaser may elect, by written notice to Seller until two (2) Business Days prior to the Closing Date, to designate any Business Account(s) as Excluded Asset(s)), all rights to collect royalties and proceeds in connection therewith with respect to the period from and after the Closing, all rights, claims and causes of action to sue and recover for past, present and future infringements, dilutions, misappropriations of, or other conflicts with, such Intellectual Property and any and all corresponding rights that, now or hereafter, may be secured throughout the world;

(e) all rights to continue the customer relationships with customers of Seller and its Affiliates to the extent pertaining to savings and trading services related to Cryptocurrency;

(f) all Contracts listed on Schedule 1.1(f) (the “Assigned Contracts”) (for the avoidance of doubt, not including the 3AC Loan); and

(g) other than the Excluded Documents, all Documents, goodwill, payment intangibles and general intangible assets and rights of or otherwise used or held for use by or on behalf of Seller and its Affiliates, in each case in connection with or related to any of the foregoing categories of Acquired Assets; provided that Seller shall be entitled to retain copies of Documents (subject to Section 6.19).

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Seller be deemed to sell, transfer, assign, convey or deliver, and Seller shall retain all right, title and interest to all other properties, rights, interests and other assets of Seller that are not Acquired Assets, including the following (collectively, the “Excluded Assets”):

(a) all Cash and Cash Equivalents, all bank accounts, and all deposits (including maintenance deposits and security deposits for rent, electricity, telephone or otherwise) or prepaid or deferred charges and expenses, including all lease and rental payments, that have been prepaid by Seller, and any retainers or similar amounts paid to Advisors or other professional service providers, in each case, other than the Acquired Coins;

(b) all Contracts of Seller other than the Assigned Contracts, including the Contracts listed on Schedule 1.2(b) (the “Excluded Contracts”);

(c) all Documents, in each case, (i) to the extent they are primarily used in, or primarily relate to, any of the Excluded Assets or Excluded Liabilities (including information stored on the computer systems, data networks or servers of Seller, other than Voyager User Accounts), (ii) to the extent that such Documents constitute Seller’s financial accounting Documents, all minute books, organizational documents, stock registers and such other books and records of Seller to the extent pertaining to the ownership, organization or existence of Seller, Tax Returns (and any related work papers), corporate seals, checkbooks, and canceled checks, in each case to the extent not primarily relating to the Acquired Assets or Assumed Liabilities or (iii) that Seller is required by Law to retain; provided that, to the extent not prohibited by applicable Law, Purchaser shall have the right to make copies of any portions of such Documents;

(d) all Documents to the extent prepared or received by Seller or any of its Affiliates in connection with the sale of the Acquired Assets, this Agreement, or the Transactions, including (i) all records and reports prepared or received by Seller or any of its Affiliates or Advisors in connection with the sale of the Acquired Assets and the Transactions, including all analyses relating to the business of Purchaser or its Affiliates so prepared or received in connection therewith, (ii) all bids and expressions of interest received from third parties with respect to the acquisition of Seller’s business or assets, and (iii) all privileged materials, documents and records of Seller or any of its Affiliates (together with the Documents specified in Sections 1.2(c) and 1.2(h), the “Excluded Documents”);

(e) all current and prior insurance policies of Seller, including for the avoidance or doubt all director and officer insurance policies, and all rights and benefits of any nature of Seller with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries, in each case, other than Acquired Voyager Claims;

(f) all membership interests or other equity interests of Seller or any of its Affiliates or securities convertible into, exchangeable, or exercisable for any such membership interests or other equity interests;

(g) (i) all Retained Avoidance Actions, (ii) all preference or avoidance claims or actions arising under the Bankruptcy Code or applicable Law, (iii) all other rights, claims, causes of action, rights of recovery, rights of set-off, and rights of recoupment as of the Closing of Seller or any of its Affiliates, in each case, either (A) arising out of or relating to events occurring on or prior to the Closing Date, except as set forth in Section 1.1, or (B) related to any Credit Matter, and (iv) all claims that Seller or any of its Affiliates may have against any Person with respect to any other Excluded Assets or any Excluded Liabilities, in each case other than Acquired Voyager Claims;

(h) Seller's claims or other rights under this Agreement, including the Purchase Price hereunder, or any agreement, certificate, instrument, or other document executed and delivered between Seller and Purchaser or their respective Affiliates in connection with the Transactions, or any other agreement between Seller and Purchaser or their respective Affiliates entered into on or after the date hereof;

(i) (x) all Tax attributes of Seller or its Affiliates (including refunds of income Taxes of Seller or its Affiliates, but excluding any Tax refunds or Tax attributes with respect to Taxes in respect of the Acquired Assets for any taxable period (or portion thereof) beginning after the Closing Date allocable to Purchaser in accordance with Section 9.3(d) or with respect to Transfer Taxes), (y) all Tax refunds and Tax attributes with respect to Taxes in respect of the Acquired Assets (i) for any Pre-Closing Tax Period or (ii) that are Excluded Liabilities, and (z) all Tax refunds and Tax attributes with respect to Taxes in respect of the Excluded Assets;

(j) every asset of Seller that would otherwise constitute an Acquired Asset (if owned immediately prior to the Closing) if conveyed or otherwise disposed of during the period from the date hereof until the Closing Date (i) at the direction of the Bankruptcy Court or (ii) as otherwise permitted under Section 6.1(b);

(k) all demands, allowances, refunds, rebates (including any vendor or supplier rebates), rights (including under or with respect to express or implied guarantees, warranties, representations, covenants and indemnities), claims, counterclaims, defenses, credits, causes of action, rights of set off, rights of recovery or rights of recoupment relating to or arising against suppliers, vendors, merchants, manufacturers and counterparties to leases, licenses or any Contract, arising out of or relating to events occurring on or prior to the Closing Date, in each case other than Acquired Voyager Claims;

(l) the properties, rights, interests, equity and assets of Coinify ApS and its direct and indirect subsidiaries;

- (m) all Money Transmitter Licenses;
- (n) Seller's accounts receivable, and other amounts or Liabilities owing, from its Affiliates;
- (o) (i) all Seller Plans and assets of all Seller Plans that do not constitute Acquired Coins and (ii) personnel records relating to employees of Seller and Holdings;
- (p) all information and Personal Information related to individual consumers that is not Acquired User Data, including any Personal Information that is subject to the GDPR or collected from natural persons with addresses outside of the United States;
- (q) the 3AC Loan;
- (r) all VGX Token Smart Contracts; and
- (s) the properties, rights, interests and assets set forth on Schedule 1.2(s).

1.3 Assumption of Certain Liabilities. On the terms and subject to the conditions set forth herein and in the Agreement Order, the Plan and the Confirmation Order, effective as of the Closing, in addition to the other components of the Purchase Price described in Section 2.1(a), Purchaser shall irrevocably assume from Seller (or with respect to Taxes, if applicable, from Seller's applicable Affiliate) (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and Seller shall (or with respect to Taxes, if applicable, cause Seller's applicable Affiliate to) irrevocably transfer, assign, convey, and deliver to Purchaser, only the following Liabilities, without duplication and only to the extent not paid prior to the Closing (collectively, the "Assumed Liabilities"):

- (a) all Liabilities and obligations of Seller under the Assigned Contracts to the extent such Liabilities arise from and after the Closing or relate to events, facts and circumstances first existing after the Closing;
- (b) all cure costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts (the "Cure Costs");
- (c) all Liabilities arising out of the conduct of the business or the ownership of the Acquired Assets, in each case, solely by Purchaser from and after the Closing Date and to the extent such Liabilities arise from events, facts and circumstances first existing after the Closing Date;
- (d) all Liabilities for Taxes with respect to the Acquired Assets for any taxable period (or portion thereof) beginning after the Closing Date allocable to Purchaser in accordance with Section 9.3(d);
- (e) all Liabilities relating to all Transfer Taxes; and
- (f) all Liabilities set forth on Schedule 1.3(f);



provided, however, that whether or not any Liability for Taxes is an Assumed Liability shall be governed solely by Section 1.3(d) and Section 1.3(e).

1.4 Excluded Liabilities. Notwithstanding anything herein to the contrary, Purchaser shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of, or Action against, Seller or any of its Affiliates or relating to the Acquired Assets, the Excluded Assets or the business and operations of Seller and its Affiliates, of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on or prior to the Closing Date or arising thereafter, including as a result of any act, omission, or circumstances taking place prior to the Closing, other than the Assumed Liabilities (all such Liabilities that are not Assumed Liabilities being referred to collectively herein as the “Excluded Liabilities”). For the avoidance of doubt, and without limiting the foregoing, Purchaser shall not be obligated to assume, and does not assume, and hereby disclaims, all of the following Liabilities of Seller and its Affiliates (each of which shall constitute an Excluded Liability hereunder):

(a) all Liabilities (i) existing prior to the filing of the Bankruptcy Case that are subject to compromise under the Bankruptcy Code and (ii) to the extent not otherwise expressly assumed herein (including in the Commercial Covenants), incurred subsequent to the filing of the Bankruptcy Case and prior to the Closing;

(b) all Liabilities related to (i) customer accounts of Seller or its Affiliates (including Voyager User Accounts), except for those obligations of Purchaser expressly set forth in the Commercial Covenants and (ii) commercial payables or amounts owing by Seller or its Affiliates, including to any software vendors;

(c) all Liabilities for Taxes (i) with respect to the Acquired Assets for any Pre-Closing Tax Period allocable to Seller in accordance with Section 9.3(d); (ii) of Seller and their Affiliates for any taxable period; or (iii) arising from or in connection with an Excluded Asset; and

(d) all Liabilities resulting from Seller’s or any of its Affiliates’ breach of, violation of, or non-compliance with the provisions of any Laws relating to the ownership or operation of their respective businesses, the Acquired Assets and the Excluded Assets or the Transactions, including any bulk transfer Laws or similar Laws of any jurisdiction in connection with the Transactions; and

(e) all Successor Liabilities, including with respect to any investigation or other Action against, concerning or otherwise with respect to Seller, its business or its assets.

1.5 Assumption/Rejection of Certain Contracts.

(a) Assumption and Assignment of Executory Contracts. Seller shall, and shall cause its Affiliates to, provide timely and proper written notice of the Seller’s request for entry of the Confirmation Order to all parties to any executory Contracts or unexpired leases to which Seller is a party that are Assigned Contracts and take all other actions reasonably necessary to cause such Contracts to be assumed by Seller and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code to the extent that such Contracts are Assigned Contracts at Closing. The



Confirmation Order shall provide that as of and conditioned on the occurrence of the Closing, Seller shall assign or cause to be assigned to Purchaser, as applicable, the Assigned Contracts, each of which shall be identified by the name or appropriate description and date of the Assigned Contract (if available), the other party to the Assigned Contract and the address of such party for notice purposes, all included on an exhibit attached to either the Plan Supplement, a notice filed in connection with the motion for approval of the Confirmation Order or a separate motion for authority to assume and assign such Assigned Contracts. Such exhibit shall also set forth Seller's good faith estimate of the amounts necessary to cure any defaults under each of the Assigned Contracts as determined by Seller based on Seller's books and records or as otherwise determined by the Bankruptcy Court. At the Closing, Seller shall, pursuant to the Agreement Order, the Confirmation Order and the Assignment and Assumption Agreement(s), assume and assign to Purchaser (the consideration for which is included in the Purchase Price), all Assigned Contracts that may be assigned by Seller to Purchaser pursuant to sections 363 and 365 of the Bankruptcy Code, subject to adjustment pursuant to Section 1.5(b). At the Closing, Purchaser shall (i) pay all Cure Costs and (ii) assume, and thereafter in due course and in accordance with its respective terms pay, fully satisfy, discharge and perform all of the obligations under each Assigned Contract pursuant to section 365 of the Bankruptcy Code.

(b) Excluding or Adding Assigned Contracts Prior to Closing. Purchaser shall have the right to notify Seller in writing of any Assigned Contract that it does not wish to assume or a Contract to which Seller is a party that Purchaser wishes to add as an Assigned Contract up to five (5) Business Days prior to the Closing Date, and (i) any such previously considered Assigned Contract that Purchaser no longer wishes to assume shall be automatically deemed removed from the Schedules related to Assigned Contracts and automatically deemed to be an Excluded Contract, in each case, without any adjustment to the Purchase Price, and (ii) any such previously considered Excluded Contract that Purchaser wishes to assume as an Assigned Contract shall be automatically deemed added to the Schedules related to Assigned Contracts, automatically deemed removed from the Schedules related to Excluded Contracts, and assumed by Seller to sell and assign to Purchaser, in each case, without any adjustment to the Purchase Price. Purchaser shall be solely responsible for the payment, performance and discharge when due of the Liabilities under the Assigned Contracts arising or that are otherwise payable from the time of and after the Closing. No Contract set forth on Schedule 1.2(s) shall be subject to the terms of this Section 1.5(b).

(c) Non-Assignment.

(i) Notwithstanding anything to the contrary in this Agreement but subject to Section 6.1, a Contract shall not be an Assigned Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract is rejected by Seller or terminated by Seller or any other party thereto, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Purchaser as an Assigned Contract hereunder and is not continued or otherwise extended upon assumption; provided that Seller shall obtain Purchaser's consent prior to seeking to reject or terminate, or rejecting or terminating, any Assigned Contract or any Contract assumed by Purchaser pursuant to Section 1.5(a) or Section 1.5(b) from and after the date of this Agreement.

(ii) Notwithstanding anything to the contrary in this Agreement, to the extent an Acquired Asset requires a Consent or Governmental Authorization (other than,

and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of Seller's rights over such asset, and such Consent or Governmental Authorization has not been obtained prior to such time as it is to be transferred by Purchaser as an Acquired Asset hereunder, such asset shall not be an Acquired Asset hereunder and shall not be transferred to, or received by, Purchaser. In the event that any Acquired Asset is deemed not to be assigned pursuant to this clause (ii), the Closing shall nonetheless take place subject to the terms and conditions set forth herein and, thereafter, through the earlier of such time as such Consent or Governmental Authorization is obtained and the closing of the Bankruptcy Case, Seller and Purchaser shall (A) use reasonable best efforts to secure such Consent or Governmental Authorization as promptly as practicable after the Closing and (B) enter into a commercially reasonable arrangement reasonably proposed by Purchaser, including subcontracting, licensing, or sublicensing to Purchaser any or all of Seller's rights and obligations with respect to any such Acquired Asset, under which (1) Purchaser shall obtain (without materially infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits (net of the amount of any related Tax costs actually incurred by Seller or its Affiliates or any direct reasonable and documented out-of-pocket costs actually incurred by Seller or its Affiliates resulting from the retention and maintenance by Seller or its Affiliates) with respect to such Acquired Asset with respect to which the Consent or Governmental Authorization has not been obtained and (2) Purchaser shall assume any related burden and obligation with respect to such Acquired Asset to the extent such burden and obligation would constitute an Assumed Liability if such Acquired Asset was transferred at Closing. Upon satisfying any requisite Consent or Governmental Authorization requirement applicable to such Acquired Asset after the Closing, such Acquired Asset shall promptly be transferred and assigned to Purchaser in accordance with the terms of this Agreement, the Agreement Order, the Plan and Confirmation Order, and the Bankruptcy Code. Notwithstanding anything herein to the contrary, the provisions of this Section 1.5(c) shall not apply to any consent or approval that is not required to be obtained by operation of the Bankruptcy Code (including section 365(f)).

## ARTICLE II

### CONSIDERATION; PAYMENT; CLOSING

#### 2.1 Consideration; Payment.

(a) Subject to the terms and conditions herein, the aggregate consideration (collectively, the "Purchase Price") to be paid by Purchaser for the purchase of the Acquired Assets shall be: (i) (A) the assumption of Assumed Liabilities, (B) a cash payment of \$20,000,000 (the "Cash Payment"), (C) the Seller Expenses, if any, payable pursuant to Section 6.21, and (D) Purchaser's obligations to make the payments set forth in Section 6.12 and Section 6.14.

(b) Subject to the terms and conditions herein, at the Closing, Purchaser shall deliver, or cause to be delivered, to Seller (i) the Cash Payment, plus (ii) the Seller Expenses, if any, payable pursuant to Section 6.21, less (iii) the Deposit, together with all received investment income, if any (the "Closing Date Payment"). Any payment required to be made pursuant to this Agreement in cash (including the Closing Date Payment) shall be made by wire transfer of

immediately available funds to such bank account as shall be designated in writing by the applicable Party to the other Party at least two (2) Business Days prior to the date such payment is to be made.

(c) Upon reasonable advance written notice to Purchaser (in any event delivered to Purchaser no less than five Business Days prior to the Closing Date) Seller shall be entitled to withhold such portion of the Seller Held Coins as is necessary to satisfy Seller's obligations under the Plan (the "Withheld Coins"), and Seller shall distribute, or take such other action with respect to, the Withheld Coins only in accordance with the Plan and the provisions of this Agreement. To the extent there are any Withheld Coins, the provisions of this Agreement shall be read accordingly to give effect to the withholding and subsequent transfer, distribution or other action with respect to any such Withheld Coins, *mutatis mutandis*.

## 2.2 Deposit.

(a) Purchaser has made, on the date hereof or will make on the first Business Day following the date hereof, an earnest money deposit with Acquiom Clearing House LLC (the "Escrow Agent") in the amount equal to \$10,000,000 (the "Deposit"), by wire transfer of immediately available funds for deposit into an escrow account (the "Escrow Account"). Subject to Section 2.2(b) and Section 2.2(c), the Deposit and any received investment income, if any, shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of Seller or Purchaser and shall be applied against payment of the Purchase Price on the Closing Date. Seller hereby acknowledges and agrees that the Deposit qualifies as the deposit required pursuant to the Bidding Procedures Order.

(b) If this Agreement has been validly terminated (i) by Seller pursuant to Section 8.1(d) or Section 8.1(f), (ii) by Purchaser pursuant to Section 8.1(c), in circumstances where Seller would be entitled to terminate this Agreement pursuant to Section 8.1(d) or Section 8.1(f), or (iii) by Seller pursuant to Section 8.1(g) in connection with and following any Purchaser Development and not in connection with a Higher and Better Offer (each of (i), (ii), and (iii), a "Purchaser Default Termination"), then within three (3) Business Days after the date of such termination, the Parties shall execute any instructions necessary to permit the Escrow Agent to disburse the Deposit together with all received investment income, if any, to Seller.

(c) If this Agreement has been validly terminated by either Party, other than as contemplated by Section 2.2(b), then the Deposit, together with all received investment income, if any, shall be returned to Purchaser within three (3) Business Days after such termination, and, at Purchaser's request, Seller shall execute any instructions necessary to permit the Escrow Agent to disburse the Deposit together with all received investment income, if any, to Purchaser.

(d) If the Closing occurs, the Deposit shall be transferred to Seller.

2.3 Closing. Subject to the terms and on the conditions set forth in this Agreement, the closing of the purchase and sale of the Acquired Assets, the delivery of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement at and in connection with such closing (the "Closing") will take place by telephone conference and electronic exchange of documents (or, if the Parties agree to

hold a physical closing, at the offices of Kirkland & Ellis LLP, located at 601 Lexington Avenue, New York, New York 10022) at 10:00 a.m. Eastern Time on the third (3rd) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VII (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions), or at such other place and time as the Parties may agree in writing. The date on which the Closing actually occurs in accordance with the provisions hereof is referred to herein as the “Closing Date.”

2.4 Closing Deliveries by Seller. At the Closing, Seller shall deliver to Purchaser:

(a) a bill of sale and assignment and assumption agreement substantially in the form of Exhibit A (the “Assignment and Assumption Agreement”) duly executed by Seller;

(b) each of the Acquired Coins to the wallet address designated by Purchaser for the relevant Acquired Coins of such type; and prior to transferring any Acquired Coins in full, Seller shall send a test transaction of a *de minimis* amount and shall immediately deliver the remainder of the relevant Acquired Coins, following Purchaser’s confirmation that the *de minimis* amount was properly delivered; provided that such transfers of the Acquired Coins shall be deemed complete when each transfer is publicly confirmed on the blockchain for the related Coin at least the number of times set forth on <https://support.kraken.com/hc/en-us/articles/203325283-Cryptocurrency-deposit-processing-times> (or a successor site agreed by Seller and Purchaser); provided further that (i) for Acquired Coins held on the Binance.US Platform as of the Closing Date, such Acquired Coins shall be transferred to the Binance.US Platform account designated by Purchaser and (ii) in the case of ETH Coins that are Staked Coins as of the date hereof, such staked ETH Coins shall be delivered pursuant to the means mutually agreed between Purchaser and Seller acting reasonably;

(c) a short-form trademark and domain name assignment agreement substantially in the form of Exhibit B (the “Trademark and Domain Name Assignment Agreement”), duly executed by Seller;

(d) an IRS Form W-9 properly completed and duly executed by Seller or Seller’s regarded owner for U.S. federal income Tax purposes;

(e) an officer’s certificate, dated as of the Closing Date, executed by a duly authorized officer of Seller certifying that the conditions set forth in Sections 7.2(a) and 7.2(b) have been satisfied; and

(f) the Seller Statement pursuant to Section 6.11(c).

2.5 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to (or at the direction of) Seller:

(a) without duplication, the Closing Date Payment pursuant to Section 2.1(b);

(b) the Assignment and Assumption Agreement, duly executed by Purchaser;

(c) the Trademark and Domain Name Assignment Agreement, duly executed by Purchaser; and

(d) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Sections 7.3(a) and 7.3(b) have been satisfied.

2.6 Withholding. Purchaser and its Affiliates shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement such amounts as are required to be deducted or withheld under applicable tax Law. Prior to making any such deduction or withholding, Purchaser or its applicable Affiliate shall use reasonable best efforts to (x) notify the person in respect of which such withholding or deduction is proposed to be made of such deduction or withholding and (y) give such person a reasonable amount of time to demonstrate that no or reduced withholding is required under applicable tax Law. To the extent that amounts are so deducted or withheld and paid to the appropriate Governmental Body, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as (i) disclosed in the forms, reports, schedules, statements, exhibits and other documents filed with (or furnished to) the Canadian Securities Administrators ("CSA") by Parent in respect of Seller and its business during the two-year period prior to the date hereof to the extent publicly available at least one (1) Business Day prior to the date hereof on the CSA's System for Electronic Document Analysis and Retrieval, excluding (x) any disclosures set forth or referred to in any risk factor or similar section that do not constitute statements of fact, (y) any disclosures in any forward-looking statements disclaimer, and (z) any other disclosures that are generally cautionary, predictive or forward-looking in nature (the "Filed CSA Documents") (it being acknowledged that nothing disclosed in the Filed CSA Documents will be deemed to modify or qualify the Fundamental Representations), (ii) disclosed in any forms, statements or other documents filed by any of the Debtors with the Bankruptcy Court in the Bankruptcy Case as of one (1) Business Day prior to the date hereof, or (iii) set forth in the Schedules delivered by Seller concurrently herewith and subject to Section 10.10, Seller represents and warrants to Purchaser as follows as of the date hereof and as of the Closing Date:

##### **3.1 Organization and Qualification**

(a) Except as set forth on Schedule 3.1, Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware and has all requisite limited liability company power and authority necessary to own, lease and operate its properties and assets and to carry on its business as it is now being conducted, except (other than with respect to Seller's due formation and valid existence) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.



(b) Except as set forth on Schedule 3.1, Seller is duly qualified to do business and is in good standing (where such concept is recognized under applicable Law) in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased or operated by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.2 Authorization of Agreement. Subject to requisite Bankruptcy Court approvals:

(a) Seller has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the Transactions;

(b) the execution, delivery and performance by Seller of this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement to which it is a party or to be executed by it in connection with the consummation of the Transactions (the "Seller Documents"), and the consummation by Seller of the Transactions, have been duly authorized by all requisite limited liability company action and no other limited liability company proceedings on its part are necessary to authorize the execution, delivery and performance by Seller of this Agreement and the Seller Documents and the consummation by it of the Transactions; and

(c) this Agreement has been, and the Seller Documents will be, when delivered pursuant to the terms hereof, duly executed and delivered by Seller and, assuming due authorization, execution and delivery hereof by the other Party, constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws of general application affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity, whether considered in a proceeding at law or in equity (collectively, the "Enforceability Exceptions").

3.3 Conflicts; Consents.

(a) Assuming that (x) requisite Bankruptcy Court approvals are obtained, and (y) the notices, authorizations, approvals, Orders, permits or consents set forth on Schedule 3.3(a) are made, given or obtained (as applicable), neither the execution and delivery by Seller of this Agreement, nor the consummation by Seller of the Transactions, nor performance or compliance by Seller with any of the terms or provisions hereof, will (i) conflict with or violate any provision of Seller's certificate of formation or limited liability company agreement, (ii) violate any Law or Order applicable to Seller, the Acquired Assets or the Assumed Liabilities, (iii) violate or constitute a breach of or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, modification, or cancellation of any obligation or to the loss of any benefit, any of the terms or provisions of any Material Contract or accelerate Seller's obligations under any such Material Contract, (iv) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any properties or assets of Seller or (v) violate, contravene or conflict with, result in termination or lapse of, or in any way affect any permit, except, in the case of clauses

(ii) through (v), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as set forth on Schedule 3.3(a), Seller is not required to file, seek or obtain any notice, authorization, approval, Order, permit or consent of or with any Governmental Body in connection with the execution, delivery and performance by Seller of this Agreement or the consummation by Seller of the Transactions, except (i) any requisite Bankruptcy Court approvals, or (ii) where failure to file, seek or obtain such notice, authorization, approval, Order, permit or consent would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.4 Financial Statements. Attached to Schedule 3.4 are Parent's unaudited statements of financial position as of June 30, 2022 (the "Balance Sheet Date") and audited statements of financial position as of June 30, 2021, and the related statements of loss and cash flows for each fiscal year then ended, in each case (collectively, the "Financial Statements"). Except as set forth on Schedule 3.4, the Financial Statements have been prepared, in each case, in conformity in all material respects with IFRS consistently applied, except for the absence of footnote disclosure and any customary year-end adjustments and except, in the case of the unaudited statements as of June 30, 2020 or the fiscal year then ended, with respect to any Tax matters or any impact or effect thereof. The Financial Statements are prepared based on the books and records of Parent and its Subsidiaries and present fairly in all material respects, in accordance with IFRS consistently applied, the consolidated financial condition and results of operations of Parent as of the dates and for the periods referred to therein, except as may be indicated in the notes thereto.

### 3.5 Cryptocurrency; Loans; Customer Accounts.

(a) Schedule 3.5(a) sets forth a list of all Cryptocurrency held by Seller as of a date within three (3) Business Days of the date hereof, the means through which Seller as of such date controls such Cryptocurrency (e.g., "private keys," custody agreements or agreements with parties performing validation services), whether or not such Cryptocurrency is attributable to User accounts on the Voyager Platform, and whether such Cryptocurrency constitutes collateral under any Loan (including, solely for this purpose, the 3AC Loan), which Schedule 3.5(a) shall be provided to Purchaser no later than December 18, 2022. Seller has the exclusive ability to control, including by use of "private keys" or other equivalent means or through custody arrangements or other equivalent means, all such Cryptocurrency set forth on Schedule 3.5(a) (other than, solely to the extent of any staking contract, Staked Coins), and owns such Cryptocurrency (other than Cryptocurrency that constitutes collateral under any Loan (including, solely for this purpose, the 3AC Loan) and, solely to the extent of any staking contract, Staked Coins) free and clear of all Encumbrances (other than Encumbrances that will be removed or released by operation of the Confirmation Order or the Plan); provided that such ownership and exclusive ability to control Cryptocurrency is subject to the continued existence, validity, legality, governance and public availability of the relevant blockchains.

(b) Schedule 3.5(b) sets forth a true, correct and complete list of all amounts (including any principal, interest, fees, expenses or penalties) outstanding or unpaid under any Loan.

(c) Schedule 3.5(c) sets forth a list of all Users (excluding Users with addresses in the United Kingdom, European Union or European Economic Area) as of the Petition Date and a date within three (3) Business Days of the date hereof and the account position (including type and amount of Cryptocurrency) that such User held as of immediately prior to the Petition Date and as of the date hereof, which Schedule 3.5(c) shall be provided to Purchaser no later than December 18, 2022.

(d) Seller has implemented procedures and controls regarding management of authentication credentials such as private keys and means for instructing third party custodians (“Authentication Credentials”) for Cryptocurrencies, including limitation of access to Authentication Credentials to employees who need to have such access and requiring multiple individuals to sign off on transactions. Where Authentication Credentials are not held by employees of Seller, such Authentication Credentials are held by reputable third-party custodians or wallet providers whose security procedures have been evaluated by Seller and found to be fit for purpose.

(e) Schedule 3.5(e) sets forth a true, correct and complete list of the number and type of Post-Petition Coins, on a User-by-User basis, which Schedule 3.5(e) shall be provided to Purchaser no later than December 18, 2022.

3.6 Title to Acquired Assets; Staked Coins; Exclusive Ownership; Sufficiency of Assets.

(a) Seller has good and valid title to all Acquired Assets (other than Coins pledged by a borrower as collateral in respect of any Loans and, solely to the extent of any staking contract, Staked Coins), free and clear of all Encumbrances (other than Permitted Encumbrances) and, at the Closing, subject to Section 1.5(c), Purchaser will be vested with good and valid title to all such Acquired Assets, free and clear of all Encumbrances (other than Permitted Post-Closing Liens) and Excluded Liabilities, to the fullest extent permissible under Law, including section 363(f) of the Bankruptcy Code; provided, in respect of the Acquired Coins, Purchaser will be vested with good and valid title thereto free and clear of all Encumbrances (including Encumbrances implemented through “smart contracts” or other technological means), except that with respect to any staked ETH Coins that cannot be unstaked as of the Closing, such ETH Coins shall be subject to such staking. Schedule 3.6(a) sets forth a true, correct and complete list of all Seller Held Coins that are subject to staking (“Staked Coins”).

(b) Seller is the sole owner of all Coins relating to the exchange and custody business of the Voyager Platform and has good and valid title to such Coins, free and clear of all Encumbrances (except to the extent such Coin constitutes collateral under any Loan (including, solely for this purpose, the 3AC Loan) and, solely to the extent of any staking contract, Staked Coins).

3.7 Title to Properties.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Seller has a good and valid leasehold interest to all



real property leased by Seller (the “Leased Real Property”), free and clear of all Encumbrances (other than Permitted Encumbrances). Seller does not own any real property.

(b) Subject to requisite Bankruptcy Court approvals, and assumption by Seller of the applicable Contract in accordance with applicable Law (including satisfaction of any applicable Cure Costs) and except as a result of the commencement of the Bankruptcy Case, Seller holds good title to, or holds a valid leasehold interest in, all of the material tangible property necessary in the conduct of its business as now conducted, free and clear of all Encumbrances, except for Permitted Encumbrances, other than any failure to own or hold such tangible property that is not material to Seller.

### 3.8 Contracts.

(a) Schedule 3.8 sets forth a list of each Material Contract as of the date of this Agreement. For purposes of this Agreement, “Material Contract” means (x) any Assigned Contract, and (y) any other Contract to which Seller is a party or by which it is bound (in each case, excluding any Seller Plan) that in the case of this clause (y):

(i) relates to the formation, creation, governance, economics, or control of any joint venture, partnership or other similar arrangement, other than for the avoidance of doubt, marketing and licensing Contracts entered into in the Ordinary Course;

(ii) provides for indebtedness for borrowed money of Seller having an outstanding or committed amount in excess of \$1,000,000, other than letters of credit;

(iii) relates to the acquisition or disposition of any material business (whether by merger, sale of stock, sale of assets or otherwise) pursuant to which any earn-out or deferred or contingent payment obligations remain outstanding that would reasonably be expected to involve payments by or to Seller of more than \$1,000,000 after the date hereof (in each case, excluding for the avoidance of doubt, acquisitions or dispositions of Equipment, Cryptocurrency, properties or other assets in the Ordinary Course or of Equipment, properties or other assets that are obsolete, worn out, surplus or no longer used or useful in the conduct of the business of Seller);

(iv) involves the license of material Seller Intellectual Property to third parties (other than (x) Contracts with end users of Seller’s products and services entered into in the ordinary course of business or (y) non-exclusive licenses granted to service providers, suppliers and other third parties in connection with the provision of goods or services to Seller; provided such licenses are ancillary to, and not the primary purpose of, such Contract);

(v) is a Contract (other than purchase orders or Contracts with respect to the acquisition of Cryptocurrency in the Ordinary Course) for the purchase of materials, supplies, goods, services, Equipment, or other assets pursuant to which Seller would reasonably be expected to make payments of more than \$3,000,000 during any fiscal year;

(vi) contains any provision (A) limiting, in any material respect, the right of Seller to engage in any business, make use of any Seller Intellectual Property that is

material to Seller, compete with any Person, or operate anywhere in the world, or (B) granting any exclusivity right to any third party or containing a “most favored nation” provision in favor of any third party, in each case of (A) and (B), other than (x) a Contract that can be terminated on ninety (90) days’ notice or less without resulting in a breach or violation of, or any acceleration of any rights or obligations or the payment of any penalty under, such Contract, (y) customer Contracts entered into in the Ordinary Course granting exclusive rights to certain of Seller’s services or containing “most favored nation” provisions with respect to certain of Seller’s products or (z) any provision in any license agreements for third party Intellectual Property being licensed to Seller that limits Seller’s use of such licensed Intellectual Property to specified fields of use or specified territories;

(vii) evidences or relates to a Loan, including security or collateral agreements;

(viii) is a custody agreement or agreement with any Person performing validation or staking services with respect to any Cryptocurrency;

(ix) each Contract evidencing or governing financial or commodity hedging or similar trading activities (including with respect to Cryptocurrency), including any master agreements or confirmations governing swaps, options or other derivatives, or futures account agreements and/or brokerage statements or similar Contract; and

(x) any Contracts with any Governmental Body, regulatory service providers or self-regulatory organizations in connection with Seller’s business or the Voyager Platform.

(b) Subject to requisite Bankruptcy Court approvals, and assumption by Seller of the applicable Contract in accordance with applicable Law (including satisfaction by Purchaser of any applicable Cure Costs) and except (i) as a result of the commencement of the Bankruptcy Case and (ii) with respect to any Contract that has previously expired in accordance with its terms, been terminated, restated, or replaced, (A) each Material Contract is valid and binding on Seller and, to the Knowledge of Seller, each other party thereto, and is in full force and effect, subject to the Enforceability Exceptions, (B) Seller, and, to the Knowledge of Seller, any other party thereto, have performed all obligations required to be performed by it under each Material Contract, (C) Seller has not received a written notice of the existence of any breach or default on the part of Seller under any Material Contract, (D) there are no events or conditions which constitute, or, after notice or lapse of time or both, will constitute a default on the part of Seller, or to the Knowledge of Seller, any counterparty under such Material Contract and (E) to the Knowledge of Seller, Seller has not received any written notice from any Person that such Person intends to terminate, or not renew, any Material Contract, except in each case of (A) through (E), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### 3.9 Permits; Compliance with Laws.

(a) Except as set forth on Schedule 3.9, (i) Seller is not in violation of any Laws, Orders or any Money Transmitter Requirement, applicable to the Acquired Assets and (ii) Seller holds, and is in compliance with, all licenses, permits, registrations and authorizations, including

Money Transmitter Licenses, necessary for the lawful ownership and operation of the Acquired Assets and Seller's business, except in each case as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Seller and each of its directors, officers and employees acting in such capacity are and have in the past three (3) years been in compliance with the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), and any other U.S. or foreign Law concerning anti-corruption or anti-bribery applicable to its business, and Seller is not, to the Knowledge of Seller, being investigated by any Governmental Body with respect to, or been given notice in writing by a Governmental Body of, any violation by Seller of the FCPA or any other U.S. or foreign Law concerning anti-corruption or anti-bribery applicable to its business, in each case, except to the extent such non-compliance, investigation or notice of violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) neither Seller nor any director or officer of Seller, or any employee, agent or representative or other Person who performs or has performed services on behalf of Seller in the past three (3) years, is a Person that is the subject or target of economic sanctions administered by the Office of Foreign Assets Control of the United States Department of Treasury ("OFAC") (including the designation as a "Specially Designated National or Blocked Person" thereunder), the United Nations Security Council, His Majesty's Treasury, the European Union, the Bureau of Industry Security of the U.S. Department of Commerce, the U.S. Department of State, or any sanctions measures under the U.S. International Emergency Economic Powers Act, the U.S. Trading with the Enemy Act, the U.S. Iran Sanctions Act, the U.S. Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, the U.S. Iran Threat Reduction and Syria Human Rights Act of 2012, the U.S. National Defense Authorization Act of 2012 or the U.S. National Defense Authorization Act of 2013, or any executive order, directive or regulation pursuant to the authority of any of the foregoing, including the regulations of the United States Department of the Treasury set forth under 31 CFR, Subtitle B, Chapter V, or any orders or licenses issued thereunder (collectively, "Sanctions"), nor any Sanctioned Person; (ii) to the Knowledge of Seller, the Acquired Assets are not the property or interests in property of a Sanctioned Person, and are not otherwise the subject or target of Sanctions; and (iii) Seller has not in the past three (3) years been in violation of applicable Sanctions.

(d) Seller and each of its directors, officers and employees acting in such capacity are and have in the past three (3) years been in compliance with all anti-money laundering and financial recordkeeping and reporting Laws to which it is subject, including the related rules, regulations or guidelines issued, administered or enforced by any Governmental Body (collectively, the "Anti-Money Laundering Laws"), and no Action by or before any Governmental Body involving Seller (or, in respect of the dealings of Seller, involving any of Seller's directors, officers or employees) with respect to the Anti-Money Laundering Laws is pending, or, to the Knowledge of Seller, threatened, in each case, except to the extent such non-compliance or Action would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(e) Seller does not (i) have assets located outside the United States, or (ii) derive revenue from users located outside the United States.

(f) Seller does not engage in (a) the design, fabrication, development, testing, production, or manufacture of one or more “critical technologies” within the meaning of Section 721 of the Defense Production Act of 1950, as amended, including all implementing regulations thereof (the “DPA”), or (b) the ownership, operation, maintenance, supply, manufacture, or servicing of “covered investment critical infrastructure” within the meaning of the DPA (where such activities are covered by column 2 of Appendix A to 31 C.F.R. Part 800).

3.10 Environmental Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) Seller is, and has been since January 1, 2021, in compliance with all applicable Environmental Laws, (b) since January 1, 2021, Seller has not received any written notice alleging that Seller is in violation of or liable under, any Environmental Law that is unresolved, (c) Seller possesses and is in compliance with all permits required under Environmental Laws for the operation of its business as currently conducted (“Environmental Permits”), (d) there is no Action under or pursuant to any Environmental Law or Environmental Permit that is pending or, to the Knowledge of Seller, threatened in writing against Seller, (e) Seller is not subject to any Order imposed by any Governmental Body pursuant to Environmental Laws under which there are uncompleted, outstanding or unresolved obligations on the part of Seller and (f) Seller has not released any Hazardous Substances at the Leased Real Property in quantities or concentrations that currently require Seller to conduct remedial activities, or that have given rise to any Action against Seller, under Environmental Laws.

3.11 Intellectual Property; Data Privacy.

(a) Schedule 3.11(a)(i) sets forth as of the date hereof a true, correct and complete list of all registrations and applications included in the Seller Intellectual Property (the “Seller Registered IP”), indicating for each item the owner, registration or application number, registration or application date and the applicable filing jurisdiction or domain name registrar, as applicable. Except as otherwise indicated on Schedule 3.11(a), all Seller Registered IP is owned exclusively by Seller, and is subsisting, and to the Knowledge of Seller, valid and enforceable. There is no outstanding Action or Order challenging or adversely affecting the validity or enforceability of any material Seller Registered IP, or Seller’s ownership of or rights in any material Seller Intellectual Property.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Seller owns all of the rights, title and interest in and to the Seller Intellectual Property (other than Intellectual Property licensed to Seller), free and clear of all Encumbrances (other than Permitted Encumbrances). Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all of the Seller Intellectual Property (other than Intellectual Property licensed to Seller) is subsisting, valid and enforceable.

(c) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) Seller owns or has legally enforceable and sufficient rights to use all Intellectual Property necessary to the conduct of the business of Seller as currently conducted free and clear of all Encumbrances (other than Permitted Encumbrances) and (ii) Seller has taken commercially reasonable steps in accordance with industry practice to maintain the confidentiality of non-public Intellectual Property; provided that nothing in this

Section 3.11(c) shall be interpreted or construed as a representation or warranty with respect to whether there is any infringement, misappropriation, or violation of any Intellectual Property, which is the subject of Section 3.11(e).

(d) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Actions are pending or, to the Knowledge of Seller, threatened against Seller, and since January 1, 2021, Seller has not received any written notice or claim, (i) challenging the ownership, validity, enforceability or use by Seller of any Intellectual Property owned by or exclusively licensed to Seller or (ii) alleging that Seller is infringing, misappropriating or otherwise violating the Intellectual Property of any Person.

(e) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, since January 1, 2021, (i) no Person has infringed, misappropriated or otherwise violated the rights of Seller with respect to any Intellectual Property owned by or exclusively licensed to Seller and (ii) the operation of the business of Seller has not violated, misappropriated or infringed the Intellectual Property of any other Person.

(f) The consummation of the Transactions will not result in the grant of any right or license to any third party of any material Seller Intellectual Property (other than Intellectual Property licensed to Seller).

(g) Seller has complied in the past three (3) years in all material respects with all applicable Privacy Laws, privacy policies and notices, and contractual commitments related to the Processing of Personal Information (collectively, "Privacy Requirements"), and the consummation of the Transactions will not cause Seller to breach, in any material respect, any Privacy Requirements.

(h) Seller has established and implemented and maintains a written information security program that contains commercially reasonable safeguards designed to protect Personal Information and against any Security Incident.

(i) Except as would not, individually or in the aggregate, reasonably be expected to have a material impact on the Acquired Assets, taken as a whole, there have been no Security Incidents involving Personal Information in Seller's custody, possession or control or for which Seller is otherwise responsible. Except as set forth on Schedule 3.11(i), Seller has not in the past three (3) years: (i) notified or been legally required to notify any affected individuals, Governmental Body or other parties in connection with any Security Incident pursuant to Privacy Requirements; (ii) been the subject of any Action with respect to any unauthorized Processing of Personal Information or violation of any Privacy Laws by any Person; (iii) received any written inquiry, notice, request, claim, complaint, correspondence, or other communication from any Governmental Body or other Person relating to any Security Incident or alleged violation of any Privacy Laws; or (iv) made any ransomware or similar payment in connection with any Security Incident.

### 3.12 Tax Matters.

(a) To the Knowledge of Seller, except with respect to income Tax and information Tax Returns, Seller has prepared (or caused to be prepared) and duly and timely filed



(taking into account valid extensions of time within which to file) all material Tax Returns in respect of the Acquired Assets or otherwise required to be filed by it, and all such Tax Returns (taking into account all amendments filed in respect thereto) are true, correct and complete in all material respects.

(b) To the Knowledge of Seller, all material Taxes in respect of the Acquired Assets, other than income Taxes or Taxes attributable to information Tax Returns, or otherwise required to be paid by Seller (whether or not shown on any Tax Return) have been duly and timely paid.

(c) To the Knowledge of Seller, there are no Encumbrances for Taxes on the Acquired Assets or any other assets of Seller other than for Taxes not yet due or payable.

(d) Seller has not, within the past five (5) years, been a member of an affiliated group of corporations filing a consolidated federal income Tax Return (other than a group the common parent of which is Parent or one of its Subsidiaries).

(e) Seller has not waived any statute of limitations in respect of material Taxes or agreed to any extension of time with respect to an assessment or deficiency for material Taxes (other than pursuant to extensions of time to file Tax Returns obtained in the Ordinary Course), including, for the avoidance of doubt, with respect to Taxes in respect of the Acquired Assets.

(f) Seller has not participated in any "listed transaction" within the meaning of U.S. Treasury Regulation Section 1.6011-4(b)(2).

(g) Except as set forth on Schedule 3.12(g), solely as of the date hereof, (x) Seller has not received a written notice from a Governmental Body of any proposed adjustment, deficiency or underpayment of material amounts of Taxes with respect to the Acquired Assets, and (y) there are no pending or threatened audits or other Actions for or relating to any Liability for Taxes with respect to the Acquired Assets, except for, in each case of clause (x) and (y), those that have been fully satisfied, resolved or finally withdrawn.

(h) Seller has not received a claim from a Governmental Body that Tax Returns are required to be filed in relation to the Acquired Assets or the Assumed Liabilities in a jurisdiction where no such Tax Returns have been filed or are currently filed.

(i) Notwithstanding anything in this Agreement to the contrary, the representations and warranties in this Section 3.12 shall constitute the sole representations and warranties with respect to Taxes and no representation or warranty is made with respect to the validity of any Tax position or the availability of any Tax attribute for any Tax period (or any portion thereof) following the Closing.

3.13 Affiliate Transactions. Except as set forth on Schedule 3.13 or in the "Interest Of Management And Others In Material Transactions" disclosure in the Filed CSA Documents or customer accounts of officers or directors, to the Knowledge of Seller, no Affiliate of Seller, or any officer or director of Parent or Seller, (a) is a party to any agreement that constitutes an Acquired Asset having a potential or actual value or a contingent or actual Liability exceeding \$500,000, other than (i) loans and other extensions of credit to directors and officers of Seller for

travel, business or relocation expenses or other employment-related purposes in the Ordinary Course, (ii) employment arrangements in the Ordinary Course and (iii) the Seller Plans or (b) has any material interest in any Acquired Asset.

3.14 Brokers. Except for Moelis, the fees and expenses of which will be paid by Seller, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transactions based upon arrangements made by or on behalf of Seller or any of its Affiliates for which Purchaser or its Affiliates shall be liable.

3.15 Litigation. Except for the general pendency of the Bankruptcy Case, Actions that would not reasonably be expected to have a Material Adverse Effect or as set forth Schedule 3.15, there are no filed actions, claims, complains, summons, suits, litigations, arbitrations pending or threatened in writing against Seller.

3.16 Absence of Changes. Since the Balance Sheet Date, (a) there has not been any Material Adverse Effect and (b) no action has been taken with respect to the Acquired Assets that would have required the consent of Purchaser under Section 6.1 if undertaken after the date hereof.

3.17 No Other Representations or Warranties. Except for the representations and warranties expressly contained in this Article III (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) or in the certificate to be delivered pursuant to Section 2.4(e) (the "Express Seller Representations") (it being understood that Purchaser has relied only on the Express Seller Representations), Purchaser acknowledges and agrees that neither Seller nor any other Person on behalf of Seller makes, and Purchaser has not relied on, is not relying on, and will not rely on the accuracy or completeness of any express or implied representation or warranty with respect to Seller, the Acquired Assets or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person (including in any presentations or other materials prepared by Moelis) (the "Information Presentation") or in that certain datasite administered by Datasite (the "Dataroom") or elsewhere to Purchaser or any of its Affiliates or their respective Advisors by or on behalf of Seller or any of its Affiliates. Without limiting the foregoing, except for the Express Seller Representations, neither Seller nor any other Person will have or be subject to any Liability whatsoever to Purchaser, or any other Person, resulting from the distribution to Purchaser or any of its Affiliates or their respective Advisors, or Purchaser's or any of its Affiliates' or Advisors' use of or reliance on, any such information, including the Information Presentation, any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in the Dataroom or otherwise in expectation of the Transactions or any discussions with respect to any of the foregoing information.

3.18 No Outside Reliance. Notwithstanding anything contained in this Article III or any other provision of this Agreement to the contrary, Seller acknowledges and agrees that the Express Purchaser Representations are the sole and exclusive representations, warranties and statements of any kind made to Seller and on which Seller may rely in connection with the Transactions. Seller acknowledges and agrees that all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including the

completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Purchaser Representations), including in any meetings, calls or correspondence with management of Purchaser or any other Person on behalf of Purchaser or any of its Affiliates or Advisors, are, in each case, specifically disclaimed by Purchaser and that Seller has not relied on any such representations, warranties or statements.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth in the Schedules delivered by Purchaser concurrently herewith and subject to Section 10.10, Purchaser represents and warrants to Seller as follows as of the date hereof and as of the Closing Date.

4.1 Organization and Qualification. Purchaser is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority necessary to carry on its business as it is now being conducted, except (other than with respect to Purchaser's due incorporation and valid existence) as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the Transactions. Purchaser is duly licensed or qualified to do business and is in good standing (or its equivalent) in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets leased by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the Transactions.

4.2 Authorization of Agreement. Purchaser has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the Transactions. The execution, delivery and performance by Purchaser of this Agreement, and the consummation by Purchaser of the Transactions, subject to requisite Bankruptcy Court approvals, have been duly authorized by all requisite corporate or similar organizational action and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery and performance by Purchaser of this Agreement and the consummation by it of the Transactions. Subject to requisite Bankruptcy Court approvals, this Agreement has been duly executed and delivered by Purchaser and, assuming due authorization, execution and delivery hereof by the other Party, constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except that such enforceability may be limited by the Enforceability Exceptions.

#### 4.3 Conflicts; Consents.

(a) Except for the consents, licenses, waivers, exemptions, authorizations, approvals, filings, notifications or registrations required under any Money Transmitter Requirements in any Unsupported Jurisdiction applicable to Purchaser and the Binance.US Platform (the "Unsupported Jurisdiction Approvals"), assuming that (i) requisite Bankruptcy Court approvals are obtained, and (ii) the notices, authorizations, approvals, Orders, permits or consents set forth on Schedule 4.3 are made, given or obtained (as applicable), neither the



execution and delivery by Purchaser of this Agreement, nor the consummation by Purchaser of the Transactions, nor performance or compliance by Purchaser with any of the terms or provisions hereof, will (A) conflict with or violate any provision of Purchaser's articles of incorporation or bylaws or similar organizational documents, (B) violate any Law or Order applicable to Purchaser, (C) violate or constitute a breach of or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, modification, or cancelation of any obligation or to the loss of any benefit, any of the terms or provisions of any loan or credit agreement or other Contract to which Purchaser is a party or accelerate Purchaser's obligations under any such Contract, or (D) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any properties or assets of Purchaser or any of its Subsidiaries, except, in the case of clauses (B) through (D), as would not, individually or in the aggregate, reasonably be expected to prevent or materially impair or delay the ability of Purchaser to consummate the Transactions.

(b) Except for the Unsupported Jurisdiction Approvals, Purchaser is not required to file, seek or obtain any notice, authorization, approval, Order, permit or consent of or with any Governmental Body in connection with the execution, delivery and performance by Purchaser of this Agreement or the consummation by Purchaser of the Transactions, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to prevent or materially impair or delay the ability of Purchaser to consummate the Transactions.

4.4 Financing. Purchaser has, as of the date hereof, and will have at the Closing, sufficient funds in cash in an aggregate amount necessary to (a) pay the Closing Date Payment pursuant to Section 2.1(b) and any Seller Expenses to the extent payable by Purchaser pursuant to Section 6.21, and (b) pay all fees and expenses of Purchaser in connection with the Closing. Purchaser is and shall be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts and the related Assumed Liabilities.

4.5 Permits. Purchaser has Money Transmitter Licenses in all States of the United States of America, other than the Unsupported Jurisdictions and any States in which the operation of Purchaser's business does not require a Money Transmitter License. Assuming the accuracy in all material respects of the representations and warranties set forth on Sections 3.9(a), 3.9(d) and 3.9(e) (in each case, as qualified by the Schedules) and Seller's compliance in all material respects with the covenants set forth in Sections 6.4, 6.6, 6.10 and the other Commercial Covenants, except for the Unsupported Jurisdiction Approvals, Purchaser holds all licenses, franchises, permits, certificates, approvals, and authorizations from Governmental Bodies necessary for the ownership and use of the Acquired Assets.

4.6 Brokers. There is no investment banker, broker, finder, or other intermediary which has been retained by or is authorized to act on behalf of Purchaser that might be entitled to any fee or commission in connection with the Transactions.

4.7 No Litigation. There are no Actions pending or, to the Knowledge of Purchaser, threatened against or affecting Purchaser that will materially and adversely affect Purchaser's performance under this Agreement or Purchaser's ability to consummate the Transactions.

4.8 Certain Arrangements. As of the date hereof, there are no Contracts, undertakings, commitments, agreements or obligations, whether written or oral, between any member of the Purchaser Group, on the one hand, and any member of the management of Seller or its board of managers (or applicable governing body of any Affiliate of Seller), any holder of equity or debt securities of Seller, or any lender or creditor of Seller or any of its Affiliates, on the other hand, (a) relating in any way to the acquisition of the Acquired Assets or the Transactions or (b) that would be reasonably likely to prevent, restrict, impede or affect adversely the ability of Seller or any of its Affiliates to entertain, negotiate or participate in any of the Transactions.

4.9 Solvency. As of the date hereof Purchaser is and, assuming (x) that the representations and warranties made by Seller herein are true and connect, (y) Seller has complied in all material respects with its covenants and other agreements hereunder, and (z) the conditions set forth in Section 7.1 and Section 7.2 have been satisfied, then immediately after giving effect to the transactions contemplated hereby Purchaser shall be, Solvent. "Solvent" means, with respect to any Person, such Person (a) is able to pay its debts as they become due; (b) owns property that has a fair saleable value greater than the amounts required to pay its debt (including a reasonable estimate of the amount of all contingent liabilities) and (c) has adequate capital to carry on its business. In connection with the Transactions, Purchaser is not incurring, has not incurred, and does not plan to incur, debts beyond its ability to pay as they become absolute and matured.

4.10 No Additional Representations or Warranties. Except for the representations and warranties expressly contained in this Article IV (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) or in the certificate to be delivered pursuant to Section 2.5(d) (the "Express Purchaser Representations") (it being understood that Seller has relied only on the Express Purchaser Representations), Seller acknowledges and agrees that neither Purchaser nor any other Person on behalf of Purchaser makes, and Seller has not relied on, is not relying on, and will not rely on the accuracy or completeness of any express or implied representation or warranty with respect to Purchaser or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person to Seller or any of its Affiliates or their respective Advisors on behalf of Purchaser. Without limiting the foregoing, except for the Express Purchaser Representations, neither Purchaser nor any other Person will have or be subject to any Liability whatsoever to Seller, or any other Person, resulting from the distribution to Seller, its Affiliates or their respective Advisors, or Seller's, its Affiliates' or their respective Advisors' use of or reliance on, any such information, statements, disclosures, documents, projections, forecasts or other material made available to them in expectation of the Transactions or any discussions with respect to any of the foregoing information.

4.11 No Outside Reliance. Notwithstanding anything contained in this Article IV or any other provision of this Agreement to the contrary, Purchaser acknowledges and agrees that the Express Seller Representations are the sole and exclusive representations, warranties and statements of any kind made to Purchaser and on which Purchaser may rely in connection with the Transactions. Purchaser acknowledges and agrees that all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (a) the completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Seller Representations), including in the Information Presentation, the Dataroom, any projections or in

any meetings, calls or correspondence with management of Seller or any other Person on behalf of Seller or any of its Affiliates or Advisors and (b) any other statement relating to the historical, current or future business, financial condition, results of operations, assets, Liabilities, properties, Contracts, environmental compliance, employee matters, regulatory compliance, business risks and prospects of Seller, or the quality, quantity or condition of Seller's assets, are, in each case specifically disclaimed by Seller and Purchaser has not relied on any such representations, warranties or statements. Purchaser acknowledges that it has conducted to its full satisfaction an independent investigation and verification of the business including its financial condition, results of operations, assets, Liabilities, properties, Contracts, environmental compliance, employee matters, regulatory compliance, business risks and prospects of Seller, and, in making its determination to proceed with the Transactions, Purchaser has relied solely on the results of the Purchaser Group's own independent investigation and verification, and has not relied on, is not relying on, and will not rely on, Seller, the Information Presentation, any projections or any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in the Dataroom or otherwise, in each case, whether written or oral, made or provided by, or as part of, any of the foregoing or Seller or any of its Affiliates or Advisors, or any failure of any of the foregoing to disclose or contain any information, except for the Express Seller Representations (it being understood that Purchaser has relied only on the Express Seller Representations).

## **ARTICLE V**

### **BANKRUPTCY COURT MATTERS**

#### **5.1 Selection of Successful Bid and Winning Bidder and Sale Approval.**

(a) Pursuant to the Bidding Procedures Order, by execution and delivery of its counterpart signature page hereto, Seller hereby confirms that Purchaser has made the highest or otherwise best bid pursuant to the Bidding Procedures Order and has selected the Transactions as the Successful Bid and Purchaser as the Winning Bidder (each, as defined in the Bidding Procedures Order).

(b) (i) Promptly, and in any event no later than December 21, 2022 (subject to Bankruptcy Court approval where indicated), Seller shall: publicly announce that the Transactions have been selected as the Successful Bid and Purchaser has been selected as the Winning Bidder; and (ii) promptly, and in any event no later than December 21, 2022 (subject to Bankruptcy Court approval where indicated), Seller shall file a motion with the Bankruptcy Court attaching the form of an order approving the execution, delivery and performance of this Agreement by Seller (including payment of the Purchaser Expenses pursuant to Section 6.21(b) and the provisions of this Article V contemplating certain performance by Seller prior to Closing), other than the performance of those obligations to be performed at or after the Closing (the "Agreement Order"), which Agreement Order shall be in form and substance acceptable to Purchaser. Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court approval of the Agreement Order.

## 5.2 No-Shop.

(a) From and following the execution and delivery of this Agreement by Seller, Seller and its Affiliates shall not, and shall not permit their respective Advisors or Affiliates to, (i) initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers by, any Person (other than Purchaser, its Affiliates and its and their respective Advisors) with respect to an Alternative Transaction, (ii) engage in, continue or otherwise participate in any discussions or negotiations regarding an Alternative Transaction or that could reasonably be expected to lead to an Alternative Transaction, (iii) enter into any confidentiality agreement with respect to, or provide any non-public information or data to any Person relating to, any Alternative Transaction, or (iv) otherwise agree, authorize or commit to do any of the foregoing; provided that, notwithstanding the foregoing, from and after entry of the Agreement Order, Seller may take the actions set forth in clauses (ii) and (iii) above if (A) Seller has received a written, bona fide offer, proposal or indication of interest to engage in an Alternative Transaction (an “Acquisition Proposal”) from any Person after the date of this Agreement that did not result from Seller’s breach of this Section 5.2(a), and (B) the board of directors (or similar governing body) of Seller determines in good faith, after consultation with its financial advisor and outside legal counsel, that such Acquisition Proposal constitutes or is reasonably likely to lead to a Higher and Better Offer and that failure to take such actions would violate the directors’ fiduciary duties under applicable Law; provided further that if the Closing has not occurred prior to the Outside Date unless the failure of the Closing to have occurred by the Outside Date was caused by Seller’s failure to perform any of its obligations under this Agreement, and there is no Back-up Bidder (as defined in the Bidding Procedures Order) or the agreement with the Back-up Bidder has terminated in accordance with its terms, then this Section 5.2(a) shall automatically terminate and be of no further force and effect as of such date. Until entry of the Agreement Order, Seller shall promptly (but in any event within twenty-four (24) hours) provide written notice to Purchaser of any breach of this Section 5.2(a).

(b) Seller shall promptly (but in any event within twenty-four (24) hours) give written notice to Purchaser if (i) any inquiries, proposals or offers with respect to an Alternative Transaction or that could reasonably be expected to lead to an Alternative Transaction are received, (ii) any non-public information or data concerning Seller or its Affiliates or access to Seller’s or its Affiliates’ properties, books or records in connection with any Alternative Transaction or any inquiry, proposal or offer that could reasonably be expected to lead to an Alternative Transaction is requested, or (iii) any discussions or negotiations relating to an Alternative Transaction or any inquiry, proposal or offer that could reasonably be expected to lead to an Alternative Transaction are sought to be engaged in or continued by, from or with Seller, its Affiliates or any of its or their respective Advisors, as the case may be. Such notice shall set forth the name of the applicable Person making such inquiry, the material terms and conditions of any proposed Alternative Transaction (including, if applicable, correct and complete copies of any proposed agreements, inquiries, proposals or offers or, where no such copies are available, a reasonably detailed written description thereof) and the status of any such discussions or negotiations. Seller shall thereafter keep Purchaser reasonably informed, on a reasonably prompt basis, of the status of any discussions or negotiations with respect thereto. Until entry of the Agreement Order, Seller shall promptly (but in any event within twenty-four (24) hours) provide written notice to Purchaser of any breach of this Section 5.2(b).

(c) Seller (i) shall promptly (and in any event within twenty-four (24) hours) give notice to Purchaser upon a determination by Seller or its board of directors (or comparable governing body) that any Acquisition Proposal received from any Person after the date of this Agreement that did not result from Seller's breach of Section 5.2(a) constitutes a Higher and Better Offer (a "Higher Offer Determination Notice") and (ii) may cause or permit Seller or any of the other Debtors to enter into a definitive agreement with respect to such Acquisition Proposal; provided that (A) Seller and its board of directors (or comparable governing body) may only make such determination described in clause (i) of this Section 5.2(c) if, prior to the determination that such Acquisition Proposal constitutes a Higher and Better Offer, Seller negotiates, and causes its representatives to negotiate, with Purchaser in good faith (to the extent Purchaser and its representatives desire to negotiate) during such three (3) Business Day period to amend the terms and conditions of this Agreement and, no earlier than the end of such three (3) Business Day period, the board of directors (or comparable governing body) of Seller determines in good faith (after consultation with its financial advisor(s) and outside legal counsel), after giving effect to such proposed amendments to the terms and conditions of this Agreement, that such Acquisition Proposal still constitutes a Higher and Better Offer (provided further that if any material amendment is made to such Acquisition Proposal, such Acquisition Proposal shall be subject again (but only once again) to the foregoing, except that references to three (3) Business Days shall be deemed to be two (2) Business Days, and whatever the result of the second instance of the foregoing, Seller shall not be required to undertake the foregoing again before making a determination that such Acquisition Proposal constitutes a Higher and Better Offer and, if applicable, terminating this Agreement), and (B) Seller and its board of directors (or comparable governing body) may only take such action described in clause (ii) of this Section 5.2(c) if the board of directors (or comparable governing body) of Seller determines in good faith (after consultation with its outside legal counsel) that the failure to take such action would violate with its fiduciary duties under applicable Law.

### 5.3 Bankruptcy Actions.

(a) No later than December 21, 2022, Seller shall file with the Bankruptcy Court an amended Disclosure Statement (the "Amended Disclosure Statement") containing such amendments as may be necessary or appropriate to reflect the Seller's entry into this Agreement and pursuit of the Transactions, which, solely with respect to matters relating to this Agreement and the Transactions, shall be in a form and substance reasonably acceptable to Purchaser. Concurrently with the filing of such Amended Disclosure Statement (*i.e.*, no later than December 21, 2022), Seller shall file the Plan Solicitation Motion which, solely with respect to matters relating to this Agreement and the Transactions, shall be in form and substance reasonably acceptable to Purchaser; provided that Seller may modify the Plan Solicitation Motion, the Plan, and the Confirmation Order pursuant to discussions with the United States Trustee assigned to the Bankruptcy Case, the Bankruptcy Court, any creditor or committee representing a group of creditors in the Bankruptcy Case, or any other party in interest, in each case, with the consent of Purchaser solely as it pertains to matters relating to this Agreement and Transactions (such consent not to be unreasonably withheld, conditioned or delayed).

(b) From the date hereof until the earlier of (i) the termination of this Agreement in accordance with Article VIII and (ii) the Closing Date, Seller shall use reasonable best efforts to obtain entry by the Bankruptcy Court of the Agreement Order and the Confirmation Order.



(c) The Parties shall use their respective reasonable best efforts to (i) obtain entry by the Bankruptcy Court of the Agreement Order, (ii) obtain entry by the Bankruptcy Court of the Plan Solicitation Order, (iii) commence solicitation of the Plan, and (iv) (A) facilitate the solicitation, confirmation, and consummation of the Plan and the transactions contemplated thereby and hereby, (B) obtain entry of the Confirmation Order, and (C) consummate the Plan and the Transactions on the timeline set forth in the Plan Solicitation Motion and in any case prior to the Outside Date.

(d) Purchaser shall promptly take all actions as are reasonably requested by Seller to assist in obtaining the Bankruptcy Court's entry of the Agreement Order, the Plan Solicitation Order, the Confirmation Order, and any other Order reasonably necessary in connection with the Transactions as promptly as practicable, including furnishing affidavits, financial information, or other documents or information for filing with the Bankruptcy Court and making such employees and Advisors of Purchaser and its Affiliates reasonably available to testify before the Bankruptcy Court for the purposes of, among other things providing necessary assurances of performance by Purchaser under this Agreement, and demonstrating that Purchaser is a "good faith" purchaser under section 363(m) of the Bankruptcy Code, as well as demonstrating Purchaser's ability to pay and perform or otherwise satisfy any Assumed Liabilities following the Closing.

(e) Any documents filed by Seller with the Bankruptcy Court in connection with obtaining approval of effectuating the Closing shall be reasonably acceptable to Purchaser.

(f) Each of Seller and Purchaser shall (i) appear formally or informally in the Bankruptcy Court if reasonably requested by the other Party or required by the Bankruptcy Court in connection with the Transactions and the Plan solely with respect to matters relating to this Agreement and (ii) keep the other reasonably apprised of the status of material matters related to the Agreement and the Plan solely as it pertains to matters relating to this Agreement and Transactions, including, upon reasonable request promptly furnishing the other with copies of notices or other communications received by Seller from the Bankruptcy Court with respect to the Transactions or the Plan solely as it pertains to matters relating to this Agreement and Transactions.

(g) Seller and Purchaser acknowledge that this Agreement and the sale of the Acquired Assets are subject to Bankruptcy Court approval. Purchaser acknowledges that Seller and the other Debtors must take reasonable steps to demonstrate that they have sought to obtain the highest or otherwise best price for the Acquired Assets, including giving notice thereof to the creditors of the Debtors and other interested parties, providing information about Seller to prospective bidders, entertaining higher and better offers from such prospective bidders.

(h) Purchaser shall provide adequate assurance of future performance as required under section 365 of the Bankruptcy Code for the Assigned Contracts. Purchaser agrees that it will take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Contracts, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Purchaser's Advisors reasonably available to testify before the Bankruptcy Court.

5.4 Cure Costs. Subject to entry of the Agreement Order and the Confirmation Order, Purchaser shall, on or prior to the Closing (or, in the case of any Contract that is to be assigned following the Closing pursuant to Section 1.5, on or prior to the date of such assignment), pay the Cure Costs and cure any and all other defaults and breaches under the Assigned Contracts so that such Contracts may be assumed by Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code and this Agreement.

5.5 Approval. Seller's and Purchaser's obligations under this Agreement and in connection with the Transactions are subject to entry of and, to the extent entered, the terms of any Orders of the Bankruptcy Court (including entry of the Agreement Order and the Confirmation Order). Nothing in this Agreement shall require Seller or its Affiliates to give testimony to or submit a motion to the Bankruptcy Court that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court or its stakeholders.

5.6 No Successor Liability. The Parties intend that upon the Closing the Purchaser Group shall not and shall not be deemed to: (a) be a successor (or other such similarly situated party), or otherwise be deemed a successor, to Seller, including, a "successor employer" for the purposes of the Code, ERISA, or other applicable Laws; (b) have Liability or responsibility for any Liability or other obligation of Seller arising under or related to the Acquired Assets other than as expressly set forth in this Agreement, including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, environmental, successor, or transferee Liability, labor law, de facto merger, or substantial continuity (including under applicable Money Transmitter Requirements or securities Laws of any Governmental Body); (c) have, de facto or otherwise, merged with or into Seller; (d) be an alter ego or a mere continuation or substantial continuation of any of Seller (and there is no continuity of enterprise between Purchaser and Seller), including, within the meaning of any foreign, federal, state or local revenue, pension, ERISA, COBRA, Tax, labor, employment, environmental, or other Law, rule or regulation (including filing requirements under any such Laws, rules or regulations), or under any products liability Law or doctrine with respect to Seller's Liability under such Law, rule or regulation or doctrine; or (e) be holding itself out to the public as a continuation of Seller or its estate (the foregoing clauses (a) through (e), collectively, "Successor Liabilities").

5.7 Filings. Seller shall, and shall cause the other Debtors to, give Purchaser reasonable advance notice of, and opportunity to review and approve, any motions, pleadings, notices and other documents to be filed during the Bankruptcy Case that would reasonably be expected to be material and adverse to the Transactions (such approval not to be unreasonably withheld, conditioned or delayed, provided that Purchaser may withhold their approval in their sole discretion to the extent such motions, pleadings, notices and other documents would be inconsistent with the consummation of the Transactions in accordance herewith).

5.8 Waiver of Conflicts. Notwithstanding anything to the contrary herein or otherwise, Seller acknowledges that Paul Hastings LLP ("Paul Hastings") may have represented and may currently represent the Purchaser or one or more of its Affiliates in connection with the Transactions (including the negotiation, preparation, execution and delivery of this Agreement and related agreements, and the consummation of the Transactions) as well as other past and ongoing regulatory matters generally (the "Covered Matters"). Accordingly, Seller hereby irrevocably consents and agrees, on its behalf and on behalf of its Affiliates, to Paul Hastings representing the

Purchaser and its Affiliates from and after the Closing in connection with any matter arising out of or related to the Covered Matters. Seller (i) hereby irrevocably waives and will not assert, and will cause each of its Affiliates to waive and not assert, any actual or potential conflict of interest which has or may arise as a result of Paul Hastings's representation of the Purchaser or one or more of its Affiliates, including in any Action, in a Covered Matter, (ii) hereby consents, and will cause each of its Affiliates to consent to, any such representation, even though, in each case, (x) the interests of the Purchaser or such Affiliates may be directly adverse to Seller or its Affiliates, (y) Paul Hastings may have represented Seller or its Affiliates in a substantially related matter, or (z) Paul Hastings may be handling other ongoing matters for Seller or its Affiliates, and (iii) shall cooperate, and shall cause each of its Affiliates to cooperate, with the Purchaser in effectuating the foregoing waiver (including with respect to any objections raised by or before the Bankruptcy Court or the United States Trustee assigned to the Bankruptcy Case in respect of such waiver or representation).

## ARTICLE VI

### COVENANTS AND AGREEMENTS

#### 6.1 Conduct of Seller.

(a) Except (i) as required by applicable Law, Order or a Governmental Body, (ii) any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (iii) as expressly contemplated or required by this Agreement, (iv) to the extent related to an Excluded Asset or an Excluded Liability or (v) as set forth on Schedule 6.1, during the period from the date of this Agreement until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VIII), unless Purchaser otherwise consents in writing, Seller shall use its reasonable best efforts to carry on its business in the Ordinary Course in all material respects; provided that no action by Seller with respect to matters specifically addressed by Section 6.1(b) shall be deemed to be a breach of this Section 6.1(a) unless such action would constitute a breach of Section 6.1(b).

(b) Except (i) as required by applicable Law, Order or a Governmental Body, (ii) any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (iii) as expressly contemplated, required or permitted by this Agreement, (iv) to the extent related to an Excluded Asset or an Excluded Liability or (v) as set forth on Schedule 6.1, during the period from the date of this Agreement until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VIII), unless Purchaser otherwise consents in writing, Seller shall not:

(i) (A) incur, assume or otherwise become liable for any indebtedness for borrowed money, issue or sell any debt securities or warrants or other rights to acquire any debt securities of Seller, guarantee any such indebtedness or any debt securities of another Person or enter into any "keep well" or other agreement to maintain any financial statement condition of another Person (collectively, "Indebtedness"), except (1) for letters of credit, bank guarantees, security or performance bonds or similar credit support instruments, overdraft facilities or cash management programs, in each case issued, made or entered into in the Ordinary Course, (2) for Indebtedness incurred under existing



arrangements (including in respect of letters of credit) in an amount not to exceed \$5,000,000 in the aggregate outstanding at any time and (3) Indebtedness incurred in connection with the refinancing of any Indebtedness existing on the date of this Agreement or permitted to be incurred, assumed or otherwise entered into hereunder; provided that no such refinancing Indebtedness shall have a principal amount greater than the principal amount of the Indebtedness being refinanced (plus any applicable premiums, defeasance costs, accrued interest, fees and expenses) and shall not include any greater prepayment premiums or restrictions on prepayment than the Indebtedness being refinanced, in each case of this clause (A), other than Excluded Liabilities, (B) enter into any swap or hedging transaction or other derivative agreements or (C) make any loans, capital contributions or advances to, or investments in, any Person;

(ii) sell or transfer to any Person, in a single transaction or series of related transactions, any of the Acquired Assets, other than the sale or transfer of Withheld Coins;

(iii) perform or offer to perform any staking that is not unstaked prior to the Rebalancing Date;

(iv) enter into referral agreements with a third party with respect to Users and any Documents with respect to Users or account information with respect thereto;

(v) make any changes in financial accounting methods, principles or practices affecting the consolidated assets, Liabilities or results of operations of Seller, except (x) insofar as may be required (A) by IFRS (or any interpretation thereof), (B) by any applicable Law or (C) by any Governmental Body or quasi-governmental authority (including the International Accounting Standards Board or any similar organization) or (y) as necessary or desirable to accommodate reasonable tax positions, to the extent such tax positions would not adversely affect the Acquired Assets or Purchaser in a taxable period (or portion thereof) beginning after the Closing Date;

(vi) (x) grant any Encumbrance (other than Permitted Encumbrances) on any of its material Acquired Assets (other than Acquired Coins, which, for the avoidance of doubt, are addressed in subclause (y) of this item (vi)) other than to secure Indebtedness and other obligations in existence at the date of this Agreement (and required to be so secured by their terms), or (y) grant any Encumbrance (other than any Encumbrances that will be removed or released by operation of the Confirmation Order or the Plan) on Acquired Coins, including by submitting any Cryptocurrency to any staking contract or otherwise causing any Seller Held Coins that are not currently Staked Coins to become Staked Coins;

(vii) except, in each case, with respect to income Taxes or information Tax Returns: make, change or revoke any material Tax election; change an annual accounting period for material Taxes; adopt or change any material accounting method with respect to material Taxes; file any amended material Tax Return; enter into any closing agreement for material Taxes; settle or compromise any material Tax claim or assessment; or consent to any extension or waiver of the limitation period applicable to any

claim or assessment with respect to material Taxes; in each case to the extent such action would adversely affect the Acquired Assets or Purchaser in a taxable period (or portion thereof) beginning after the Closing Date;

(viii) waive, release, assign, settle or compromise any pending or threatened Action against Seller to the extent that such waiver, release, assignment, settlement or compromise would (A) result in an Assumed Liability in an amount in excess of \$1,000,000, individually or in the aggregate, or (B) waive or release any material rights or claims that would constitute Acquired Assets;

(ix) enter into any referral agreement with a third party with respect to Users;

(x) terminate or transfer any Business Accounts (other than any such Business Accounts that are not necessary to the operation of the Voyager Platform, with the Parties to cooperate in good faith to determine which Business Accounts are not necessary and may be terminated or transferred);

(xi) lend any Cryptocurrency to any Person, or engage in purchases or sales of any Cryptocurrency (other than Withheld Coins) other than in connection with the Rebalancing Exercise; or

(xii) authorize any of, or commit or agree, in writing or otherwise, to take any of, the foregoing actions.

(c) Nothing contained in this Agreement is intended to give Purchaser or its Affiliates, directly or indirectly, the right to control or direct Seller's operations or business prior to the Closing, and nothing contained in this Agreement is intended to give Seller, directly or indirectly, the right to control or direct Purchaser's or its Subsidiaries' operations. Notwithstanding anything to the contrary contained herein, (i) any action taken, or omitted to be taken, by Seller pursuant to any Law, Order, directive, pronouncement or guideline issued by any Governmental Body or industry group providing for business closures, "sheltering-in-place" or other restrictions that relates to, or arises out of, any pandemic, epidemic or disease outbreak shall in no event be deemed to constitute a breach of this Section 6.1 and (ii) any action taken, or omitted to be taken, by Seller to protect the business of Seller that is responsive to any pandemic, epidemic or disease outbreak, as determined by Seller in its reasonable discretion, shall in no event be deemed to constitute a breach of this Section 6.1.

## 6.2 Access to Information.

(a) From the date hereof until the Closing (or the earlier termination of this Agreement pursuant to Article VIII), Seller will (x) provide Purchaser and its authorized Advisors with reasonable access to, upon reasonable advance notice and during regular business hours, Seller's officers, employees, Advisors, properties, systems, offices, and data, documents, and information of the Seller Parties regarding the Acquired Assets, the Assumed Liabilities, the Users, Voyager User Accounts and the Voyager Platform (including, for the avoidance of doubt any of the foregoing that constitutes Acquired Information), including such financial, operating and other data and information related to the Transactions, the Acquired Assets, the Assumed Liabilities, the

Users, Voyager User Accounts, or the Voyager Platform (including, for the avoidance of doubt any of the foregoing that constitutes Acquired Information) as Purchaser or any of its representatives may reasonably request and (y) instruct the representatives of Seller to cooperate to provide such access; provided that (i) such access will occur in such a manner reasonably appropriate to protect the confidentiality of the Transactions, (ii) all requests for access will be directed to Moelis or such other Person(s) as Seller may designate in writing from time to time and (iii) nothing herein will require Seller to provide access to, or to disclose any information to, Purchaser if such access or disclosure (A) would waive any legal privilege or (B) would be in violation of applicable Laws or would violate any fiduciary duty under applicable Law with respect to Seller; provided that, in the event that Seller withholds access or information in reliance on the foregoing clause (A) or (B), Seller shall provide (to the extent possible without waiving or violating the applicable agreement, legal privilege, Law or fiduciary duty under applicable Law with respect to Seller) notice to Purchaser that such access or information is being so withheld and shall use reasonable best efforts to provide such access or information in a way that would not risk waiver of such legal privilege, applicable Law, or fiduciary duty.

(b) The information provided pursuant to this Section 6.2 will be governed by the Confidentiality Agreement and the confidentiality provisions in Section 6.19. Each Party will, and will cause its Advisors to, abide by the terms of the Confidentiality Agreement with respect to such access and any information furnished to such Party or any of its Advisors. Neither Party makes any representation or warranty as to the accuracy of any information, if any, provided pursuant to this Section 6.2, and the other Party may not rely on the accuracy of any such information, in each case, other than, with respect to Purchaser, the Express Seller Representations and, with respect to Seller, the Express Purchaser Representations.

(c) From and after the Closing for a period of three (3) years following the Closing Date (or, if later, the closing of the Bankruptcy Case), Purchaser will, following Seller's good faith written request, and solely to the extent necessary for Seller to (i) comply with Tax reporting obligations, (ii) consummate the closing of the Bankruptcy Case, (iii) prepare annual audited financial statements, (iv) submit a filing pursuant to applicable securities laws and regulations or (v) conduct the wind down of the estate (including reconciliation, investigation, and pursuit of claims) and dissolution of Seller and its Affiliates, provide Seller and its Advisors with reasonable access, during normal business hours, and upon reasonable advance notice, to the books and records in Purchaser's custody or control, including work papers, schedules, memoranda, Tax Returns, Tax schedules, Tax rulings, and other documents (for the purpose of examining and copying), in each case to the extent relating to the Acquired Assets, the Excluded Assets, the Assumed Liabilities or the Excluded Liabilities with respect to periods or occurrences prior to the Closing Date, and reasonable access, during normal business hours, and upon reasonable advance notice, to employees, officers, Advisors, accountants, offices and properties of Purchaser, in each case at no cost or expense to Purchaser; provided that (i) such access does not unreasonably interfere with the normal operations of Purchaser and (ii) nothing herein will require Purchaser to provide access to, or to disclose any information to, Seller or its Advisors if such access or disclosure (A) would waive any legal privilege or (B) would be in violation of applicable Laws or would violate any fiduciary duty; provided that, in the event that Purchaser withholds access or information in reliance on the foregoing clause (A) or (B), Purchaser shall provide (to the extent possible without waiving or violating the applicable agreement, legal privilege, Law or fiduciary duty) notice to Seller that such access or information is being so withheld and shall use reasonable

best efforts to provide such access or information in a way that would not risk waiver of such legal privilege, applicable Law, or fiduciary duty. Unless otherwise consented to in writing by Seller, Purchaser will not, for a period of three (3) years following the Closing Date, destroy, alter or otherwise dispose of any of such books and records without first offering to surrender to Seller such books and records or any portion thereof that Purchaser may intend to destroy, alter or dispose of.

(d) Except as expressly contemplated by this Agreement (including in connection with the Commercial Covenants, Section 6.3, Section 6.10(b) and Section 6.18), Purchaser will not, and will not permit any member of the Purchaser Group to, contact any officer, manager, director, employee, customer, supplier, lessee, lessor, lender, licensee, licensor, distributor, noteholder or other material business relation of Seller prior to the Closing with respect to Seller, their business or the Transactions without the prior written consent of Seller for each such contact.

### 6.3 Employee Matters.

(a) From and after the date hereof (and, if applicable, following the Closing until the winddown or dissolution of Seller), subject to applicable Laws, Seller shall deliver to Purchaser such information and documents regarding employees of Holdings (the “Seller Employees”) and independent contractors of Seller or Holdings (the “Seller Contractors”), in each case, as Purchaser shall reasonably request. Prior to the date hereof, Seller has provided Purchaser a true, correct and complete list of the Seller Employees and Seller Contractors identified by name, if applicable, department, and (subject to applicable Laws) true, correct and complete copies of all talent assessment reports for each such Seller Employee and Seller Contractor. From and after the date hereof (and, if applicable, following the Closing until the winddown or dissolution of Seller), Seller shall use reasonable best efforts to make such Seller Employees who remain employed by Holdings and Seller Contractors who remain engaged by Seller or Holdings, in each case, reasonably available to Purchaser or its Affiliates and Purchaser will work in good faith with Seller to identify top performing Seller Employees and Seller Contractors and will determine whether to make offers of employment or other services to any such Seller Employee or Seller Contractors (including by prioritizing review of Seller Employees for applicable open positions of Purchaser and its Affiliates, if any). Purchaser (or an Affiliate of Purchaser) may, in its sole discretion, make offers of employment, consulting or other services to such Seller Employees or Seller Contractors (if any) as Purchaser shall determine, on such terms and conditions as Purchaser shall determine in its sole and absolute discretion. In the event that Purchaser (or an Affiliate of Purchaser) makes such an offer of employment or services and such Seller Employee or Seller Contractor accepts, Seller hereby agrees not to enforce against Purchaser (or its Affiliate) or such Seller Employee or independent contractor the terms and conditions of any agreement to refrain from competing, directly or indirectly, with the business of Seller or any of its Affiliates or to refrain from soliciting employees, customers or suppliers of Seller or any of its Affiliates that may be applicable to such Seller Employee or Seller Contractor. Seller shall not take any action that would reasonably be expected to materially and adversely affect Purchaser’s hiring or engagement of such Seller Employee(s) or Seller Contractor(s) in accordance with this Section 6.3; provided that the announcement and implementation of any Seller Plans (including any retention programs or post-Closing treatment of Seller Employees), in each case, in a manner consistent with the provisions of this Agreement, shall not be deemed to be a breach of this sentence. Notwithstanding anything

to the contrary herein or otherwise, nothing herein shall require or obligate Purchaser or any of its Affiliates to employ or make offers of employment to any Person, or make any such offers of employment on any particular terms, each of which decisions shall be made in Purchaser's sole discretion.

(b) Prior to and following the Closing Date, Seller, Holdings and each of their Affiliates shall not communicate, and shall ensure that no representative of Seller, Holdings or their respective Affiliates communicates, with any Seller Employee or other service provider of Seller regarding post-Closing employment matters (including post-Closing employee benefit plans and compensation) with Purchaser without the prior written consent of Purchaser; provided that Seller, Holdings, and their Affiliates shall be permitted to communicate regarding their employment and termination plans and related matters.

(c) Purchaser shall not assume any Seller Plans or any Liability to or in respect of any employees or former employees of Holdings and Seller and which relates to such employees' employment with Holdings or Seller, including (i) any employment agreement, whether or not written, between Seller and any person, (ii) any Liability under any Seller Plan, or (iii) Liability arising out of any claim of an unfair labor practice, or any claim under any state unemployment compensation or worker's compensation law or regulation or under any federal or state employment discrimination law or regulation as a result of an action taken by Seller or Holdings, and all such Liabilities shall be Excluded Liabilities hereunder.

(d) Seller will, or will cause its Affiliates to, comply in all material respects with the Worker Adjustment and Retraining Notification Act of 1988 or any similar Laws ("WARN Act") with respect to any "plant closing" or "mass layoff" or group termination or similar event under the WARN Act affecting employees of Debtors (including as a result of the consummation of Transactions) whether occurring prior to or on the Closing. Subject to the terms of this Agreement, Seller and its Affiliates (including Holdings) reserve the right to (i) terminate any of their employees at any time, and otherwise reduce employee work hours, benefits and compensation, and (ii) issue termination and/or WARN Act notices relating to their employees at any time.

(e) For any employees who are principally based outside the United States, the provisions of this Section 6.3 shall apply to such employees *mutatis mutandis* to the maximum extent permitted by applicable Law.

(f) The provisions of this Section 6.3 are for the sole benefit of the Parties and nothing herein, express or implied, is intended or shall be construed to confer upon or give any Person (including for the avoidance of doubt any employees of Seller or Holdings), other than the Parties and their respective permitted successors and assigns, any legal or equitable or other rights or remedies (with respect to the matters provided for in this Section 6.3 or under or by reason of any provision of this Agreement). Nothing contained herein, express or implied: (i) shall be construed to establish, amend, or modify any benefit plan, program, agreement or arrangement; (ii) shall, subject to compliance with the other provisions of this Section 6.3, alter or limit Purchaser's, Seller's or Holdings' ability to amend, modify or terminate any particular benefit plan, program, agreement or arrangement; or (iii) is intended to confer upon any current or former employee any right to an offer of employment or service, employment or continued employment



or service for any period of time by reason of this Agreement, or any right to a particular term or condition of employment or service.

#### 6.4 Regulatory Matters.

(a) From time to time from and after the date hereof until the Closing (or the valid termination of this Agreement in accordance with its terms, if earlier), subject to the other provisions of this Section 6.4, Seller will, and will cause its Affiliates and its and their respective employees, representatives, advisors and agents to, (i) make or cause to be made all filings and submissions to the extent required to be made by Seller or any of its Affiliates under any applicable Laws for the consummation of the Transactions, if any, (ii) cooperate with Purchaser, its Affiliates and its and their respective representatives in exchanging such information and providing such assistance as Purchaser may reasonably request in connection with any filings or submissions to be made by any member of the Purchaser Group under any applicable Laws in connection with the Transactions, (iii) supply promptly any additional information and documentary material that may be requested in connection with such filings or submissions and (iv) use reasonable best efforts to take any actions necessary to obtain all approvals or clearances from any relevant Governmental Body that are required to be obtained by Seller or its Affiliates under applicable Law for the consummation of the Transactions.

(b) From time to time from and after the date hereof until the Closing (or the valid termination of this Agreement in accordance with its terms, if earlier), subject to the other provisions of this Section 6.4, Purchaser will, and will cause its respective employees, representatives, advisors and agents to, (i) make or cause to be made all filings and submissions to the extent required to be made by Purchaser under any applicable Laws for the consummation of the Transactions, if any, (ii) cooperate with Seller, its Affiliates and its and their respective representatives in exchanging such information and providing such assistance as Seller may reasonably request in connection with any filings or submissions to be made by Seller or any of its Affiliates under any applicable Laws in connection with the Transactions, (iii) supply promptly any additional information and documentary material that may be requested in connection with such filings or submissions, and (iv) use reasonable best efforts to take any actions necessary to obtain all approvals or clearances from any relevant Governmental Body that are required to be obtained by Purchaser under applicable Law for the consummation of the Transactions.

(c) From time to time from and after the date hereof until the Closing (or the valid termination of this Agreement in accordance with its terms, if earlier), the Parties commit to instruct their respective counsel to cooperate with each other to respond to any reasonable inquiries and use reasonable best efforts to seek to resolve any objections raised by any Governmental Body as promptly as practicable and for greater certainty, each Party and its respective counsel undertake to (i) promptly notify the other Party or its counsel of, and, if in writing, furnish such other Party or its counsel with copies of (or, in the case of oral communications, advise such other Party or its counsel of the contents of), any substantive communication received by such Person from a Governmental Body and (ii) keep the other Party or its counsel informed with respect to the status of any applicable submissions and filings to or inquiries by any Governmental Body in connection with this Agreement and the Transactions and any developments, meetings or discussions with any Governmental Body in respect thereof, including with respect to (A) the commencement or proposed or threatened commencement of any investigation or other Action, and (B) the nature

and status of any inquiries or objections raised or proposed or threatened to be raised by any Governmental Body with respect to this Agreement and the Transactions. From and after the date hereof until the Closing (or the valid termination of this Agreement in accordance with its terms, if earlier), none of Seller or any of its Affiliates, on the one hand, or Purchaser, on the other hand, will participate in any substantive meeting or discussion with any Governmental Body with respect of any such filings, applications, investigation or other inquiry without giving the other Party reasonable prior notice of the meeting or discussion and, to the extent permitted by the relevant Governmental Body, a reasonable opportunity to attend and participate in such meeting or discussion, and each Party will have a reasonable opportunity to review and provide comments (which shall be considered in good faith by the other Party) on the content of any filing, submission or other written communication (and any analyses, memoranda, presentations, white papers, correspondence or other written materials submitted therewith) to be submitted by the other Party or any of its Affiliates to any Governmental Body in advance of any such submission. Each Party acknowledges that, with respect to any non-public information provided by a Party to the other under this Section 6.4, each Party may (1) designate such material as restricted to “outside counsel only” and any such material shall not be shared with employees, officers or directors or their equivalents of the receiving Party without approval of the disclosing Party and (2) make appropriately limited redactions necessary to satisfy contractual confidentiality obligations, preserve attorney-client privilege or protect material relating to the valuation of the Acquired Assets. Notwithstanding anything to the contrary herein or otherwise, Purchaser will control and have final decision making authority on all regulatory strategy, submissions and procedures, after considering in good faith any reasonable advice provided by Seller in good faith.

(d) Notwithstanding anything to the contrary in this Agreement, nothing shall require or be construed to require any member of the Purchaser Group to (i) oppose any motion or Action for a temporary, preliminary or permanent Order against, or preventing or delaying, the consummation of the Transactions, or exhaust all avenues of appeal, including any proper appeal of any adverse decision or Order by any Governmental Body, (ii) enter into a consent decree, consent agreement, settlement or other agreement or arrangement (including any ancillary agreements) to hold separate, license, sell, transfer, dispose or divest (pursuant to such terms as may be required by any Governmental Body) any asset (whether tangible or intangible), (iii) agree to the termination, modification, or assignment of any relationships, joint ventures, contracts, assets, liabilities or obligations, (iv) agree to any limitations on governance, conduct, or actions of members of the Purchaser Group or operations of their respective businesses or with respect to the Acquired Assets or Assumed Liabilities, or (v) enter into any national security agreement, letter of assurance, or other mitigation agreement with the Committee on Foreign Investment in the United States or any member agency thereof acting in that capacity.

(e) From and after the date hereof until the Closing (or the valid termination of this Agreement in accordance with its terms, if earlier), Seller will not, and will not permit any of its Affiliates to, knowingly take any action, engage in any conduct or enter into any transaction that would reasonably be expected to (i) materially increase the risk of any Governmental Body entering an Order prohibiting or materially delaying the consummation of the Transactions or (ii) materially delay the consummation of the Transactions.

(f) Subject to Section 6.4(d), from and after the date hereof until the Closing (or the valid termination of this Agreement in accordance with its terms, if earlier), each Party will

use reasonable best efforts to (i) cooperate with and (ii) seek to secure approvals or authorizations from, any relevant Governmental Body, including state banking departments enforcing money transmission laws, in order to permit consummation of the Transactions in a timely manner in compliance with applicable Laws.

#### 6.5 Reasonable Best Efforts; Cooperation.

(a) Subject to the other terms of this Agreement, and without limiting, affecting or modifying the Parties' obligations under Section 6.4, or any of the Commercial Covenants, each Party shall, and shall cause its Advisors to, use its reasonable best efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary under applicable Law to cause the transactions contemplated herein to be effected as soon as practicable and the closing conditions set forth in Article VII to be satisfied, but in any event on or prior to the Outside Date, in accordance with the terms hereof and to cooperate with the other Party, its Affiliates and its and their respective Advisors in connection with any step required to be taken as a part of its obligations hereunder. The "reasonable best efforts" of Seller will not require Seller or any of its Affiliates or Advisors to expend any money to remedy any breach of any representation or warranty, to commence any Action, to waive or surrender any right, to modify any Contract or to waive or forgo any right, remedy or condition hereunder. Notwithstanding anything to the contrary herein, in the event of a conflict between this Section 6.5(a) and Section 6.4, the provisions of Section 6.4 shall control with respect to such conflict.

(b) The obligations of Seller and Purchaser pursuant to this Agreement, including this Section 6.5, shall be subject to any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Case), Seller's debtor-in-possession financing, if any, and Seller's obligations as a debtor-in-possession to comply with any Order of the Bankruptcy Court (including the Bidding Procedures Order, the Agreement Order, and the Confirmation Order) and Seller's duty to seek and obtain the highest or otherwise best price for the Acquired Assets as required by the Bankruptcy Code.

#### 6.6 Data Transfer Matters.

(a) Seller shall, and shall cause its Affiliates to, (i) within 30 days (with the Parties using their reasonable best efforts to do so within five (5) Business Days) following the later of the date hereof and the date Purchaser provides the form of such notification, distribute an initial email notification, in the form provided by Purchaser, to all Users and any other consumers located or having a home address in the United States from whom Seller has collected Personal Information regarding the Transactions (including the Rebalancing Exercise) and the transfer of such individuals' Personal Information or accounts (including the ability to opt in to a pre-Closing transfer of such User's Acquired User Data to Purchaser), and prominently post a notice, in the form provided by Purchaser, to Seller's and its Affiliates' (as applicable) primary customer-facing website regarding the same; (ii) on a weekly basis, upon the expiration of any opt in period provided in the email notification distributed by Seller, but no earlier than the later of January 3, 2023 and entry of the Agreement Order, deliver to Purchaser the respective Acquired User Data for Users who have opted into the pre-Closing data transfer pursuant to the foregoing item (i) and whose Acquired User Data has not previously been transferred (the "Pre-Closing Data Transfer");



(iii) following the date of the initial email notification until the Closing Date, continue distributing additional email notifications, in the form provided by Purchaser, to such individuals, as Purchaser reasonably requires; and (iv) on the Closing Date, deliver to Purchaser all other Acquired User Data. All notifications contemplated by the foregoing shall be subject to Purchaser's consideration of any comments thereto proposed in good faith by Seller or counsel to the committee of unsecured creditors in the Bankruptcy Case and subject to applicable Law.

(b) From and after the date hereof and through and following the Closing, Seller shall, and shall cause its Affiliates to, maintain or maintain with a third party data management and retention firm, for the entirety of the applicable retention period and at least ninety (90) days thereafter, all information required to be maintained pursuant to, or to comply with, applicable Money Transmitter Requirements or Laws related to Sanctions.

(c) Seller shall, and shall cause its Affiliates to, use reasonable best efforts to procure that all information and documentation requested in connection with the KYC Procedures meets the standards set forth in such KYC Procedures (including moving files located in storage repositories (*e.g.*, Google Drive or Box) to the appropriate files associated with the applicable User and associating such information and documentation with the applicable User), as determined by Purchaser in its reasonable discretion, prior to the User Asset Migration Date, but in each case in no event prior to the applicable timing contemplated by clauses (i) through (iv) of Section 6.6(a).

#### 6.7 Use of Name.

(a) Seller agrees that: (i) within ninety (90) days from the Closing Date, Seller shall (and shall cause its Affiliates to) cause an amendment to the governing documents of Seller and its Affiliates (as applicable) to be filed with the appropriate Governmental Body and shall take all other reasonable actions necessary to change Seller's and such Affiliate's legal, name to a name or names not containing "Voyager," any other trade mark or trade name set forth in Schedule 6.7(a) or any name confusingly similar to the foregoing; (ii) after the Closing Date neither Seller nor any of its Affiliates shall have any ownership rights in or to the name "Voyager," any other trade mark or trade name set forth in Schedule 6.7(a) or any service marks, trademarks, trade names, identifying symbols, logos, emblems, signs or insignia related thereto or containing or comprising the foregoing, including any name or mark confusingly similar thereto (collectively, the "Seller Marks"); and (iii) except as set forth in Section 6.7(a), Seller and its Affiliates shall, within ninety (90) days of the Closing Date, cease to make any use of the Seller Marks, including in any corporate or other legal name.

(b) Notwithstanding Section 6.7(a), for a period of ninety (90) days after the closing of the Bankruptcy Case, unless extended by mutual agreement of Purchaser and Seller, Purchaser hereby grants to Seller and its Affiliates (including, for the avoidance of doubt, any wind-down or similar administrator in the Bankruptcy Case or under the Plan) a non-exclusive, limited, non-transferable, non-sublicensable and revocable license to use the Seller Marks for the sole purposes of unwinding Seller's businesses and assisting Purchaser with all migrations, integrations and Transactions.

#### 6.8 Further Assurances.

(a) From time to time from and after the date hereof through and following the Closing (in the case of Seller, until the winddown or dissolution of Seller), as and when requested by either Party, the other Party will execute and deliver, or cause to be executed and delivered, all such further conveyances, notices, assumptions, assignments, documents and other instruments and will take, or cause to be taken, all such further or other actions as such requesting Party may reasonably deem necessary or desirable to evidence and effectuate the Transactions (including for the avoidance of doubt, the transfer and conveyance of any Acquired Assets that may be in the possession of Seller's Affiliates to Purchaser); provided that nothing in this Section 6.8 shall require Purchaser or the Purchaser Group to assume any Liabilities of Seller or any of its Affiliates other than the Assumed Liabilities or Seller or any of its Affiliates to transfer any assets other than Acquired Assets. In addition, from time to time following the Closing Date (in the case of Seller, until the winddown or dissolution of Seller), each Party shall, and shall cause its Affiliates to, promptly execute, acknowledge and deliver such further documents and perform such further acts as are reasonably requested by the other Party and as may be reasonably necessary to transfer and convey to Purchaser, or make available to Purchaser the Acquired Assets or the Assumed Liabilities pursuant to this Section 6.8.

(b) Without limiting Section 6.8(a), Seller will use reasonable best efforts to evidence and effectuate the transfer and conveyance of all Seller Held Coins (solely for purposes of this Section 6.8(b)), deeming the phrase "who are Debtors" in the definition of Seller Held Coins to instead read as "who are not Debtors" in accordance with Section 6.8(a), *mutatis mutandis*.

6.9 Insurance Matters. Purchaser acknowledges that, upon Closing, all nontransferable insurance coverage provided in relation to Seller and the Acquired Assets that is maintained by Seller or its Affiliates (whether such policies are maintained with third party insurers or with Seller or its Affiliates) shall cease to provide any coverage to Purchaser and the Acquired Assets and no further coverage shall be available to Purchaser or the Acquired Assets under any such policies; provided that to the extent such insurance coverage is available with respect to any Acquired Assets or Assumed Liabilities, after the Closing, (a) Seller shall, and shall cause its applicable Affiliates to, use reasonable best efforts to report in good faith to the applicable third-party insurance provider, if applicable, all events, acts, errors, accidents, omissions, incidents, injuries or other forms of occurrences to the extent relating to any Acquired Assets or Assumed Liabilities that, in each case, occurred at or prior to the Closing as reasonably requested by Purchaser to be so reported the extent covered by an occurrence-based insurance policy, (b) Purchaser shall use its reasonable best efforts to comply with the terms of any such insurance policy and (c) Seller shall, and shall cause its applicable Affiliates to, (i) use reasonable best efforts to obtain the benefit of the applicable insurance coverage under any such insurance policy and (ii) pay such benefit to Purchaser, net of (A) any deductibles, co-payment or self-insured amounts payable by Seller or any of its Affiliates or other out-of-pocket costs and expenses (including reasonable legal fees and expenses, if any) actually and reasonably incurred by Seller or any of its Affiliates in seeking such insurance proceeds and (B) any Taxes imposed on Seller or any of its Affiliates in respect of the receipt or accrual of such insurance proceeds.

#### 6.10 User Migration.

(a) Following the date hereof, Seller shall, and shall cause its Affiliates to cooperate with Purchaser to, develop (and each Party shall use reasonable best efforts to develop within 15 Business Days following the date hereof) a mutually agreed upon integration plan that sets forth all technology integrations that Purchaser deems reasonably necessary to enable all migrations of User accounts on the Voyager Platform to the Binance.US Platform as contemplated by this Agreement (the “Integration Plan”). The Integration Plan will include among other things: (i) directing customers on the Voyager Platform (including through links on the home screen for the web interface and mobile app for the Voyager Platform) to the Binance.US Platform log-in webpage or mobile app, (ii) migrating all Acquired User Data (subject to Section 6.6(a)) reasonably necessary for Purchaser to validate whether Users qualify as Existing Users and (iii) developing a process whereby any User that is not an Existing User can affirmatively accept terms and conditions to provide such User with access to their Net Owed Coins in a new Binance.US Platform account from directly within the Voyager Platform and related app in accordance with the provisions of this Agreement. Each Party shall, and shall cause its Affiliates and its and their respective employees and representatives to, comply with and implement the Integration Plan. From and after the date hereof (and following the Closing, if applicable, until the date that is six (6) months following the Closing Date), Seller shall, and shall cause its Affiliates and its and their respective employees and representatives to provide to Purchaser, its Affiliates and its and their respective employees and representatives (x) any assistance reasonably requested or required by Purchaser, its Affiliates and its and their respective employees and representatives in connection with the opening of User accounts on the Binance.US Platform, the transfer of information and Net Owed Coins from the Voyager Platform to the Binance.US Platform (including in connection with customer queries and troubleshooting with respect thereto), and the actions contemplated by this Section 6.10 and the Integration Plan and (y) subject to Section 6.6 and applicable Law, all necessary Acquired User Data in Seller’s or its Affiliates’ possession required to effectuate the Integration Plan. Purchaser shall bear the reasonable and documented out-of-pocket expenses incurred by Seller in connection with the provision of such assistance following the Closing pursuant to the immediately preceding sentence.

(b) Notwithstanding the provisions of Section 6.2(c) or Section 10.17, following entry of the Agreement Order, Purchaser and its Affiliates shall, at their sole cost and expense, be entitled to issue communications directed to Users on the Binance.US Platform and through other means of Purchaser’s choosing in connection with the Transactions or the opening of accounts on the Binance.US Platform; provided that such communications are consistent with this Agreement and applicable Law; provided that Purchaser shall not issue any such communications prior to the Closing Date without Seller’s prior written consent (which shall not be unreasonably withheld, conditioned or delayed) and subject to reasonable consultation with counsel to the committee of unsecured creditors in the Bankruptcy Case. Except as required by Section 6.11(d), Seller shall not, and Seller shall cause its Affiliates not to, issue any communication to Users, whether on the Voyager Platform or otherwise, except to the extent the form and substance of such communication has been previously approved by Purchaser or is required by applicable Law; provided that the foregoing shall not prohibit Seller from responding on an individual basis to technical support queries from Users or answering questions related to the amount of Coins such User has deposited on the Voyager Platform or communicating with customers regarding withdrawal of cash from the “for benefit of” customer accounts at

Metropolitan Commercial Bank; provided further that Seller shall, and shall cause its Affiliates to, provide Purchaser and counsel to the committee of unsecured creditors in the Bankruptcy Case with regular updates on the timing and content of such communications and shall cooperate with Purchaser in addressing any concerns related thereto. The Parties will work in good faith to (i) develop a set of talking points or FAQs for Users and Eligible Creditors with respect to the Transactions, the Bankruptcy Cases, and related matters and (ii) continue to review and revise such talking points or FAQs as other inquiries from Users and Eligible Creditors or other circumstances arise.

(c) Subject to Seller's providing the Acquired User Data in accordance with Section 6.6, and such Acquired User Data meeting the standards set forth in the KYC Procedures, as determined by Purchaser in its reasonable discretion, Purchaser shall cause an account to be opened for each User on the Binance.US Platform on or before the User Asset Migration Date. In addition to the foregoing, if Seller has not provided or does not have Acquired User Data meeting such standards with respect to a particular User, if such User provides such information and documentation meeting the standards set forth in such KYC Procedures, as determined by Purchaser in its reasonable discretion, Purchaser shall cause an account to be opened for such User in accordance with its standard account opening procedures following its receipt of such information and documentation.

(d) Seller and Purchaser shall offer (i) each eligible creditor pursuant to the Plan that is not a User (each, an "Eligible Creditor") and (ii) each User the opportunity, subject to the consummation of the Closing and such User and Eligible Creditor meeting the requirements of the KYC Procedures and accepting the terms and conditions of the Binance.US Platform, to receive its Net Owed Coins or other Plan distribution through the Binance.US Platform in accordance with Section 6.12 and the Plan. Within three (3) Business Days following the request of Purchaser (which request for the sake of clarity may be offered multiple times), Seller shall send to each User and Eligible Creditor a communication in the form provided by Purchaser notifying them of such offer.

(e) For the sake of clarity and notwithstanding anything to the contrary herein or otherwise, (i) none of Purchaser or any of its Affiliates shall be required to (A) activate an account or pay or credit any amount, whether in Coins, cash or otherwise, to any User or Eligible Creditor (or its account) that does not meet the requirements of the KYC Procedures and accept the terms and conditions of the Binance.US Platform, (B) pay or credit any amount, whether in Coins, cash or otherwise, to any User or Eligible Creditor or its account except in accordance with the Plan, or (C) credit the account of any User or Eligible Creditor with respect to Coins that have not actually been delivered to Purchaser in accordance with the provisions of Section 2.4(b), (ii) neither Purchaser nor any of its Affiliates is assuming any Liabilities of Seller or any of its Affiliates with respect to Users' accounts on the Voyager Platform or any Eligible Creditor, all of which Liabilities shall constitute Excluded Liabilities, and (iii) neither Purchaser nor any of its Affiliates shall be required to provide trading services on the Binance.US Platform or otherwise in respect of any Unsupported Coins.

#### 6.11 Rebalancing Exercise; Seller Statement.

(a) Following the date hereof and prior to the Closing (or the earlier termination of this Agreement pursuant to Article VIII), (i) Seller shall purchase and sell Cryptocurrency through one or more transactions such that, following the completion of such transactions, the number of Acquired Coins of each type is equal to the aggregate number of Deposited Coins of such type multiplied by the Rebalancing Ratio (subject to a Rebalancing Exercise Delta with respect to each Acquired Coin of no more than five percent (5%) or, if after conducting such transactions and using reasonable best efforts to meet the Rebalancing Exercise Delta of five percent (5%), Seller reasonably and in good faith determines that it will not be able to meet such Rebalancing Exercise Delta, then such other amount as Purchaser and Seller consent to, such consent not to be unreasonably withheld, conditioned or delayed), the purpose of which transactions the Parties acknowledge and agree is to ensure that there are sufficient Acquired Coins of each type to pay to each User's account on the Binance.US Platform a number of Post-Rebalancing Coins of such type in accordance with the provisions of this Agreement (such transactions, the "Rebalancing Exercise"), and (ii) Seller shall, and shall cause its employees, accountants, advisors and representatives to, consult with, and keep reasonably informed, Purchaser, its Affiliates and their respective employees, accountants, advisors and representatives with respect to the Rebalancing Exercise and all actions taken in connection therewith, including by providing Purchaser with regular updates regarding the status of the Rebalancing Exercise. For the sake of clarity, the Parties agree that for purposes of the Rebalancing Exercise, if ETH Coins that are Staked Coins cannot be unstaked by the Rebalancing Date, or if there are Coins that Seller is otherwise unable to access due to such Coins being custodied with providers that have entered insolvency proceedings prior to the date hereof, then the Parties will agree on appropriate modifications to the Rebalancing Exercise and the process for distributing Net Owed Coins to Users in light of the foregoing. The Parties agree that the Rebalancing Exercise shall be completed in accordance with the provisions of this Agreement by no later than the date that is one (1) Business Day prior to the Closing Date (such date, the "Rebalancing Date").

(b) In order to facilitate the Rebalancing Exercise, Seller shall, promptly following the date hereof, to the extent not already created prior to the date hereof, create an institutional account in Seller's name on the Binance.US Platform, and Seller may, but shall not be required to, transfer any or all Seller Held Coins to such institutional account in order to facilitate the Rebalancing Exercise (and, for the avoidance of doubt, the Binance.US Platform shall serve merely as an exchange agent in connection with the Rebalancing Exercise). Prior to engaging in any Subject Transaction outside the Binance.US Platform, Seller shall provide Purchaser with a written notice describing the parameters of such Subject Transaction, including the proposed number of Seller Held Coins of each type to be transferred in connection with such Subject Transaction (each, a "Transaction Notice") and Purchaser shall be entitled to make, by written notice (each, a "Transaction Offer Notice") to Seller within three (3) Business Days following receipt of such Transaction Notice, an offer to conduct such Subject Transaction on the Binance.US Platform, including a description of the estimated numbers of Acquired Coins that would result from the consummation of such Subject Transaction. If Seller receives any proposal to conduct such Subject Transaction from any third party which would result in a number of Acquired Coins in excess of that set forth in the Transaction Notice, Seller shall inform Purchaser of the same, and Seller shall not conduct such Subject Transaction with or through other Person(s) unless Seller provides written notice to Purchaser that Seller has determined in good faith that the



terms offered by such other Person(s) with respect to such Subject Transaction (which such terms shall be set forth in such notice) are more favorable (in terms of the best interests of Seller and its estate) than the terms set forth in the Transaction Offer Notice and Purchaser does not provide an updated Transaction Offer Notice within one (1) Business Day following receipt of such notice from Seller with terms as or more favorable (in terms of the best interests of Seller and its estate) than those set forth in Seller's notice. If Purchaser does so provide such an updated Transaction Offer Notice, Seller conduct such applicable Subject Transaction on the Binance.US Platform in accordance with such updated Transaction Offer Notice. In addition to the foregoing, Seller may request that Purchaser facilitate all or part of the Rebalancing Exercise, in which case all or such portion of the Rebalancing Exercise shall be conducted on the Binance.US Platform. Seller's use of the Binance.US Platform for the Rebalancing Exercise shall be subject in all respects to the standard terms and conditions of the Binance.US Platform (including applicable fees, spreads, costs and expenses except as set forth in the applicable Transaction Offer Notice). For the sake of clarity, Seller may withdraw any Coins from the Binance.US Platform prior to the Closing and Seller shall not be required to maintain Coins on the Binance.US Platform in connection with the Rebalancing Exercise or otherwise (except as otherwise expressly contemplated hereunder from and after the Closing and acknowledging that this sentence is not intended to and shall not preclude transactions in the Rebalancing Exercise being undertaken on the Binance.US Platform in accordance with the provisions hereof).

(c) At least one (1) Business Day prior to the Closing Date and following completion of the Rebalancing Exercise in accordance with Section 6.11(a), Seller will deliver to Purchaser a ledger in a form reasonably specified by Purchaser as far in advance of the Rebalancing Date as is reasonably practicable (the "Seller Statement") setting forth in reasonable detail, in each case as of the Rebalancing Date and following the completion of the Rebalancing Exercise in accordance with Section 6.11(a), (i) each User's user identification number, (ii) the Rebalancing Ratio and the calculation thereof, (iii) the number of each User's Deposited Coins of each type (including the name and relevant ticker symbol used on the Voyager Platform for such Deposited Coins, together with all information regarding the underlying networks and smart contracts to which such Coins are subject), (iv) the number of each User's Post-Rebalancing Coins of each type (including the name and relevant ticker symbol used on the Voyager Platform for such Post-Rebalancing Coins, together with all information regarding the underlying networks and smart contracts to which such Coins are subject), (v) the total number of Seller Held Coins and Acquired Coins of each type (including the name and relevant ticker symbol used on the Voyager Platform for such Seller Held Coins and Acquired Coins, together with all information regarding the underlying networks and smart contracts to which such Coins are subject), (vi) the total amount of gas fees that Seller will pay in connection with the transfer of each type of Acquired Coin to Purchaser in accordance with Section 2.4, and (vii) the amount of cash, Coins or other property (including the name and relevant ticker symbol used on the Voyager Platform for such Coins, together with all information regarding the underlying networks and smart contracts to which such Coins are subject) payable to each Eligible Creditor, after taking into account gas or other transaction fees incurred and paid by Seller in connection with transferring such Coins to Purchaser, and any identifying information and information required to make such payments to such Eligible Creditor under the Plan, in each case together with reasonably detailed supporting information and documentation and prepared by Seller based on Seller's and its Affiliates' books and records. Notwithstanding anything to the contrary herein, Seller hereby acknowledges and agrees that (A) Purchaser and its Affiliates shall be entitled to fully rely on the Seller Statement

and any data, information or calculation set forth therein for purposes of Section 6.11(d), and (B) in no event shall Purchaser or any of its Affiliates be responsible (x) to any Person for the Seller Statement, any data, information or calculation set forth therein or any error or inaccuracy with respect thereto or (y) for any losses, liabilities or damages in respect thereof, in each case, to the extent Purchaser takes any action in reliance thereon.

(d) Promptly following the completion of the Rebalancing Exercise, Seller shall send to each User a communication notifying such User of the Rebalancing Exercise, such User's Deposited Coins, and the Net Owed Coins attributable to such User's account on the Voyager Platform following the Rebalancing Exercise and any gas fees incurred in connection with the transfer of Coins to Purchaser pursuant to Section 2.4. Seller will, upon Purchaser's request, deliver to each Eligible Creditor a communication relating to the Transactions, any payments to be made by Purchaser or any of its Affiliates to such Eligible Creditor and any matters relating to opening an account on the Binance.US Platform, in each case that is in form and substance reasonably acceptable to Purchaser.

6.12 Crediting of Accounts; Unsupported Jurisdictions, Transfer of Coins to Seller; Liquidations or Distributions by Seller.

(a) Subject to the provisions of Section 6.10, on the User Asset Migration Date, Purchaser shall credit, or cause to be credited, (i) to the Binance.US Platform account of each User, such User's Net Owed Coins and (ii) to the Binance.US Platform account of each Eligible Creditor, the applicable amount payable to such Eligible Creditor as set forth in the Seller Statement. For the avoidance of doubt, Coins credited to any User's or Eligible Creditor's accounts on the Binance.US Platform may be made from any Coins held by or on behalf of Purchaser or any of its Affiliates. As a condition precedent to any User or Eligible Creditor accessing its account or Coins on the Binance.US Platform, such User or Eligible Creditor must satisfy the requirements set forth in Section 6.10. Following such User's or Eligible Creditor's satisfaction of such requirements, Purchaser shall allow such User or Eligible Creditor, as applicable, to access trading services with respect to its Coins subject to the Binance.US Platform's customary terms and conditions (including any transaction fees, spreads, costs and expenses). Notwithstanding anything to the contrary herein, with respect to any User or Eligible Creditor that does not satisfy such requirements prior to the date that is three (3) months following the later of the Closing Date or the date on which such terms and conditions are made available for such User or Eligible Creditor to accept, then Purchaser shall convert any Acquired Coins with respect to such Users or Eligible Creditors into United States Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such United States Dollars, together with any cash or other assets in respect of such Users or Eligible Creditors to Seller within five (5) Business Days, for further distribution by Seller in accordance with the Plan.

(b) Notwithstanding anything to the contrary herein or otherwise, for any Person (including any User or Eligible Creditor) that is located in Hawaii, New York, Texas or Vermont, to the extent that Purchaser does not have a Money Transmitter License or similar license in such jurisdiction or in any other jurisdiction where the applicable Governmental Body asserts after the date of this Agreement that Purchaser or any of its Affiliates requires a Money Transmitter License or similar license in order to consummate the Transactions or perform its obligations hereunder (each, an "Unsupported Jurisdiction"), Purchaser and its Affiliates shall not be required

to (i) credit or make any payment (with any Coins, cash or otherwise) to any account of such Person (including any User or Eligible Creditor) on the Binance.US Platform, or (ii) permit any such Person or account of such Person on the Binance.US Platform to be active or conduct any trading or investing in Coins. Notwithstanding anything herein to the contrary, prior to the Closing, Seller have the option to elect (upon consultation with professionals representing the committee of unsecured creditors in the Bankruptcy Case) that either (i) Seller shall not deliver to Purchaser any Coins, cash, or other asset with respect to any User or Eligible Creditor located in an Unsupported Jurisdiction or (ii) Seller shall deliver such Coins to Purchaser at Closing. Upon receipt by Purchaser of any Unsupported Jurisdiction Approvals with respect to any Unsupported Jurisdiction(s), which Unsupported Jurisdiction Approvals permit Purchaser to perform its obligations under Section 6.12(a) in such Unsupported Jurisdiction, then Purchaser shall promptly notify Seller of receipt of such Unsupported Jurisdiction Approval and, if Seller has not previously delivered applicable Coins, cash, or other asset with respect to any User or Eligible Creditor located in such Unsupported Jurisdiction then Seller shall so deliver such assets to Purchaser within five (5) Business Days of such notification, and Purchaser shall (following receipt of any applicable assets if required) consummate the actions in such Unsupported Jurisdiction that were restricted by this Section 6.12(b); provided that to the extent Purchaser does not receive such Unsupported Jurisdiction Approval(s) with respect to any Unsupported Jurisdiction prior to the date that is six (6) months following the Closing Date, then to the extent Purchaser is holding any Acquired Coins with respect to Users or Eligible Creditors in such Unsupported Jurisdictions, Purchaser shall convert such Acquired Coins into United States Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such United States Dollars, together with any cash or others assets in respect of such Users or Eligible Creditors to Seller within five (5) Business Days, for further distribution by Seller in accordance with the Plan.

(c) From and after the Closing, or if this Agreement is terminated in accordance with its terms (other than in connection with a Purchaser Default Termination), then from and after such termination, if Seller or any of its Affiliates intends to consummate a transaction or series of related transactions pursuant to which it will purchase, sell or liquidate any Coins or distribute the proceeds thereof to any User or Eligible Creditor, in each case other than any Additional Bankruptcy Distributions (but including any purchase, sale or liquidation of any Coins prior to making any Additional Bankruptcy Distributions) or any of the transactions provided for in the preceding provisions of this Section 6.12 then (i) Seller may, but shall not be required to, utilize the Binance.US Platform, or other service offerings of Purchaser or its Affiliates, to consummate such transaction or series of related transactions (including any purchase, sale, liquidation or distribution described above) on Purchaser's and its Affiliates' standard terms and conditions (including any transaction fees, spreads, costs and expenses) and (ii) if this Agreement is terminated in accordance with its terms (other than in connection with a Purchaser Default Termination), then Seller may, but shall not be required to, elect that Purchaser and Seller will (and Seller will cause its Affiliates and any other Person with whom Seller or its Affiliates is consummating any such transaction or transactions to) cooperate in good faith to develop and facilitate any transaction similar to the Rebalancing Exercise required by Seller, any of its Affiliates, and any other Person with whom Seller or its Affiliates is consummating any such transaction or transactions, in order to consummate any such transaction or series of related transactions; provided that in no event will Purchaser or any of its Affiliates be required to make any distribution or facilitate or consummate any transaction under this Section 6.12(c) with respect



to any User located in an Unsupported Jurisdiction. In connection with any distribution made by Purchaser or its Affiliates pursuant to this Section 6.12(c), all right, title and interest in and to any property so distributed (including any Coins) shall be made or transferred to Purchaser or its Affiliates free and clear of any Encumbrances prior to any such distribution by Purchaser or its Affiliates and such distributions will be made on Purchaser's and its Affiliates' standard terms and conditions (including any transaction fees, spreads, costs and expenses).

(d) The provisions of Sections 6.10, 6.11, 6.12, and 6.14 shall be subject to such protocols, if any, as the Parties may agree in writing after the date hereof with respect to the transfer of information, migration of users, migration or transfer of Coins, and any matters related to the foregoing or such Sections.

(e) Notwithstanding anything to the contrary herein, but subject to the last sentence of this Section 6.12(e), (i) Seller (prior to the Closing) and each User and Eligible Creditor (from and after the Closing) shall retain all right, title, and interest in and to Coins allocated to it in accordance with this Agreement on the Binance.US Platform (notwithstanding any terms and conditions of the Binance.US Platform) through and including such time as such Coins are returned or distributed to Seller or such User and Eligible Creditor, as applicable, hereunder, and such Coins shall be held by Purchaser solely in a custodial capacity in trust and solely for the benefit of Seller or the applicable User or Eligible Creditor; provided that in the case of Coins allocable to Users or Eligible Creditors located in Unsupported Jurisdictions, to the extent, if any, that such Coins are transferred to Purchaser pursuant to Section 6.12(b), from and after the Closing until the applicable Unsupported Jurisdiction Approval is obtained or such Coins are liquidated in accordance with Section 6.12(b) hereunder, such Coins shall be held by Purchaser in a custodial capacity on behalf of Seller and not the applicable User or Eligible Creditor; (ii) any and all cash or cash equivalents to be transferred at any time to Purchaser hereunder for further distribution to Seller or any User or Eligible Creditor (and not for Purchaser's own account (*e.g.*, Purchaser Expenses)) shall at all times (until transferred by Purchaser to Seller or the applicable User or Eligible Creditor, as applicable, hereunder) be held solely in a third party bank account of a FDIC-insured financial institution solely for the benefit of or "fbo" Seller or such User or Eligible Creditor, as applicable; (iii) Purchaser shall not, after the date hereof, introduce any further conditions to the withdrawal of cash from accounts on the Binance.US Platform that are not in effect as of the date hereof that would apply to any User's or Eligible Creditor's account on the Binance.US Platform; (iv) Purchaser shall not at any time halt (temporarily or permanently) withdrawals of cash or such Coins from any User's or Eligible Creditor's account on the Binance.US Platform; (v) Purchaser shall not halt trading of such Coins on the Binance.US Platform at any point during the 30 days following any distribution to any User's or Eligible Creditor's account on the Binance.US Platform hereunder, except, in the case of each of the foregoing clauses (iii), (iv) and (v), (A) as required by applicable Law or any Order or Governmental Body, (B) as may be permitted pursuant to Purchaser's terms and conditions in effect on the Closing Date (including for purposes of halting fraud or illegal activity), (C) as necessary to complete any system, account, wallet, security or exchange maintenance, patching, repair, upgrade or to the extent any withdrawal or trading is unable to be processed due to any act or omission by, or any Event related to, any third party (*e.g.*, a bank closure or a third party ceasing to support any Cryptocurrency), (D) in order to avoid any legal, compliance or regulatory issue or in order to ensure market stability, or (E) in order to avoid any information security risk; (vi) Purchaser shall not take, permit to be taken, or omit to take any action that would reasonably

be expected to (A) result in the insolvency of Purchaser or (B) prevent or materially impair or materially delay the ability of Purchaser to perform the Commercial Covenants in accordance herewith; (vii) Purchaser shall comply in all material respects with all provisions of the Plan applicable to Purchaser or the Distribution Agent (as defined in the Plan) to the extent Purchaser is acting as a distribution agent in connection with the Plan; and (viii) Purchaser shall not pledge, repledge, hypothecate, rehypothecate, sell, lend, stake, arrange for staking, or otherwise transfer or use any amount of such Coins, separately or together with other property, with all attendant rights of ownership, and for any period of time and without retaining a like amount of Coins, or invest such Coins (except as otherwise directed by Seller or any User or Eligible Creditor, as applicable). Notwithstanding the foregoing, Purchaser's obligations under this Section 6.12(e) shall terminate and be of no further force or effect on the earlier of (x) the date that Purchaser's obligations under Section 6.10, Section 6.11, Section 6.12, and Section 6.14 have been performed in full or Purchaser otherwise ceases to have any obligations thereunder, and (y) the date on which this Agreement is terminated in accordance with its terms.

6.13 VGX Token Listing Review Process. Following the entry of the Agreement Order, Purchaser will initiate and undertake consistent with its policies and past practices an internal review process to determine whether VGX tokens can be listed for trading on the Binance.US Platform, which review process will include submitting the VGX token to Purchaser's listing committee for consideration consistent with its policies and past practices.

6.14 Additional Bankruptcy Distributions. The provisions of this Section 6.14 shall cease to apply and be of no further force and effect upon the soonest to occur of (a) Purchaser ceasing to provide the services necessary to comply with this Section 6.14, (b) Purchaser's bankruptcy or insolvency, (c) the issuance of a final, non-appealable Order by a Governmental Body prohibiting the consummation of the transactions contemplated by this Section 6.14, (d) any Purchaser Development (disregarding for the purposes of this Section 6.14 the language "prior to the Closing"), and (e) Purchaser's material breach of Section 6.12(e) or this Section 6.14 which remains uncured for 30 days following Purchaser's receipt of Seller's written notice of such material breach.

(a) Any Additional Bankruptcy Distributions made on account of Users' or Eligible Creditors' claims against the Debtors and all right, title and interest therein and thereto shall be made or transferred to Purchaser free and clear of any Encumbrances. Any such transfers in Coins shall be deemed complete when each transfer is publicly confirmed on the blockchain for the related Coin at least the number of times set forth on <https://support.kraken.com/hc/en-us/articles/203325283-Cryptocurrency-deposit-processing-times> (or a successor site mutually agreed by Seller and Purchaser), or, for any Coins held in Seller's account on the Binance.US Platform, transferred to the Binance.US Platform account designated by Purchaser, or in the case of staked ETH Coins, such staked ETH Coins shall be delivered pursuant to the means reasonably specified by Purchaser.

(b) Upon the Bankruptcy Court's approval of any Additional Bankruptcy Distributions (including through the Confirmation Order), Seller shall deliver to Purchaser a statement setting forth (i) the amount of Additional Bankruptcy Distributions to be made to each User or Eligible Creditor, as applicable, as approved by the Bankruptcy Court in Coins (including the name and relevant ticker symbol used on the Voyager Platform for such Coins, together with

all information regarding the underlying networks and smart contracts to which such Coins are subject) after taking into account gas or other transaction fees incurred and paid by Seller in connection with transferring such Coins to Purchaser in accordance with this Section 6.14, (ii) the amount of Additional Bankruptcy Distributions to be made to each User or Eligible Creditor, as applicable, as approved by the Bankruptcy Court in cash, and (iii) the user identification number of each such User or other identifying or account information of any Eligible Creditor, as applicable (such statement, the “Post-Bankruptcy Statement”). The provisions set forth in the last sentence of Section 6.11(a) shall apply to the Post-Bankruptcy Statement, *mutatis mutandis*.

(c) Promptly following Purchaser’s receipt of any Additional Bankruptcy Distributions (but no later than five (5) Business Days following receipt of any Additional Bankruptcy Distributions), Purchaser shall credit such Additional Bankruptcy Distributions to each User’s and Eligible Creditor’s accounts, if any, on the Binance.US Platform in such amounts set forth on, and in accordance with, the Post-Bankruptcy Statement. The Additional Bankruptcy Distributions credited to each User and Eligible Creditor in accordance with this Section 6.14(a) are referred to herein as “Credited Additional Bankruptcy Distributions”.

(d) If any Additional Bankruptcy Distribution is to be received by Purchaser pursuant to Section 6.14(a), prior to the crediting of the applicable Credited Additional Bankruptcy Distribution pursuant to Section 6.14(a), Seller shall reduce such Credited Additional Bankruptcy Distribution by and shall retain (i) the number of Coins allocated in the applicable Post-Bankruptcy Statement to each User or Eligible Creditor located in an Unsupported Jurisdiction in which Purchaser or its applicable Affiliate(s) have not received the necessary Money Transmitter License, and (ii) the amount of cash allocated in the applicable Post-Bankruptcy Statement to each User or Eligible Creditor located in an Unsupported Jurisdiction in which Purchaser or its applicable Affiliate(s) have not received the necessary Money Transmitter License, and, in either case, such amounts shall be distributed by Seller in accordance with the Plan.

(e) There shall be no transaction fees, spreads, costs or expenses charged to or payable by Seller, any User, or any Eligible Creditor with respect to any Additional Bankruptcy Distributions to the account of Seller, such User or such Eligible Creditor, as applicable, on the Binance.US Platform contemplated by this Section 6.14. With respect to any User or Eligible Creditor that does not meet the requirements of the KYC Procedures and accept the terms and conditions of the Binance.US Platform (or otherwise is not or no longer is a user with an active account on the Binance.US Platform) as of or prior to the date of such Post-Bankruptcy Statement, Purchaser shall convert all Coins allocable to such User or Eligible Creditor in such Additional Bankruptcy Distribution into United States Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such United States Dollars, together with any cash or other assets in respect of such Users or Eligible Creditors, to Seller within five (5) Business Days, for further distribution by Seller in accordance with the Plan.

6.15 Unstaking. Promptly following the date hereof (until the Closing or the earlier termination of this Agreement pursuant to Article VIII) but without limiting what is permitted by Section 6.1(b)(iii), Seller shall, and shall cause its Affiliates to, (a) ensure that all Seller Held Coins (other than ETH Coins that are Staked Coins as of the date hereof) are freely transferable and not subject to any restrictions on transfer (including restrictions on transfer implemented through

“smart contracts” or other technological means), (b) without limiting the foregoing, ensure that all Seller Held Coins (other than ETH Coins that are Staked Coins as of the date hereof) are unstaked prior to the Rebalancing Date, and (c) consult with Purchaser and its representatives, keep Purchaser and its representatives reasonably informed, and provide Purchaser and its representatives with draft documents reasonably in advance of execution or delivery thereof and incorporate any comments therein proposed in good faith by Purchaser or its representatives, in each case, in connection with any of the foregoing.

6.16 Receipt of Misdirected Assets; Liabilities. From and after the Closing, if Purchaser or Seller becomes aware that Seller or any of its Affiliates is in possession of any right, property or asset that is an Acquired Asset, such Party shall promptly inform the other Party of that fact. Thereafter, at the request of Purchaser, Seller shall promptly transfer or cause such of its Affiliates to transfer such right, property or asset (and shall promptly endorse and deliver any such asset that is received in the form of cash, checks or other documents) to Purchaser or any other entities nominated by Purchaser for no consideration, and such asset will be deemed the property of Purchaser of any such nominees held in trust by Seller for Purchaser or any such nominees until so transferred. From and after the Closing, if Purchaser or Seller becomes aware that Purchaser or any of its Affiliates is in possession of any right, property or asset that is an Excluded Asset, such Party shall promptly inform the other Party of that fact. Thereafter, at the request of Seller, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such right, property or asset (and shall promptly endorse and deliver any such asset that is received in the form of cash, checks or other documents) to Seller or any other entities nominated by Seller for no consideration, and such asset will be deemed the property of Seller of any such nominees held in trust by Purchaser for Seller or any such nominees until so transferred; provided that if Purchaser discovers any items (or portions thereof) that would be Documents but for the fact that they relate to Excluded Assets, Purchaser shall use reasonable best efforts to destroy such items. Notwithstanding anything to the contrary herein or otherwise, if any amount (including any principal, interest, fees, expenses or penalties) is outstanding or unpaid under any Loan from or after the Closing, then such Loan, any agreements or documents entered into in connection therewith and any collateral posted in respect thereof shall be deemed Acquired Assets for all purposes under this Agreement and any other agreements or documents entered into in connection herewith, and Seller shall, and shall cause its Affiliates to, sell, transfer, assign, convey and deliver to Purchaser all of its and their right, title and interest in and to the foregoing, free and clear of all Encumbrances in the same manner as the other Acquired Assets under Section 1.1, *mutatis mutandis*, for no additional consideration and at no cost or expense to Purchaser or its Affiliates.

6.17 Acknowledgment by Purchaser.

(a) Purchaser acknowledges and agrees that it has conducted to its full satisfaction an independent investigation and verification of the business, including its financial condition, results of operations, assets, Liabilities, properties, Contracts, regulatory compliance, business risks and prospects of Seller and the Acquired Assets and the Assumed Liabilities, and, in making its determination to proceed with the Transactions, Purchaser and the Purchaser Group have relied solely on the results of the Purchaser Group’s own independent investigation and verification and have not relied on, are not relying on, and will not rely on, Seller, any information, statements, disclosures, documents, Projections, forecasts or other material made available to Purchaser or any of its Affiliates or their respective Advisors in the Dataroom, the Information

Presentation, or the Projections or any information, statements, disclosures or materials, in each case, whether written or oral, made or provided by, or as part of, any of the foregoing or any other Seller Party, or any failure of any of the foregoing to disclose or contain any information, except for the Express Seller Representations (it being understood that Purchaser and the Purchaser Group have relied only on the Express Seller Representations). Purchaser acknowledges and agrees that (i) the Express Seller Representations are the sole and exclusive representations, warranties and statements of any kind made to Purchaser or any member of the Purchaser Group and on which Purchaser or any member of the Purchaser Group may rely in connection with the Transactions and (ii) all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (A) the completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Seller Representations) including in the Dataroom, Information Presentation, Projections, meetings, calls or correspondence with management of Seller, any of the Seller Parties or any other Person on behalf of Seller or any of the Seller Parties or any of their respective Affiliates or Advisors and (B) any other statement relating to the historical, current or future business, financial condition, results of operations, assets, Liabilities, properties, Contracts, regulatory compliance, business risks and prospects of Seller, or the quality, quantity or condition of Seller's assets, are, in each case, specifically disclaimed by Seller, on its behalf and on behalf of the Seller Parties. Purchaser: (x) disclaims reliance on the items in clause (ii) in the immediately preceding sentence (which, for the avoidance of doubt, do not include any Express Seller Representations); and (y) acknowledges and agrees that it has relied on, is relying on and will rely on only the items in clause (i) in the immediately preceding sentence. Without limiting the generality of the foregoing, Purchaser acknowledges and agrees that neither Seller or any other Person (including the Seller Parties), has made, is making or is authorized to make, any representations or warranties, whether in written, electronic or oral form, express or implied with respect to, (1) any potentially material information regarding Seller or any of its assets (including the Acquired Assets), Liabilities (including the Assumed Liabilities) or operations and (2) as to the quality, merchantability, fitness for a particular purpose, or condition of Seller's business, operations, assets, Liabilities, Contracts, regulatory compliance, business risks and prospects or any portion thereof, except, in each case, solely to the extent set forth in the Express Seller Representations.

(b) Without limiting the generality of the foregoing, in connection with the investigation by the Purchaser Group of Seller, Purchaser and the members of the Purchaser Group, and the Advisors of each of the foregoing, have received or may receive, from or on behalf of Seller, certain projections, forward-looking statements and other forecasts (whether in written, electronic, or oral form, and including in the Information Presentation, Dataroom, management meetings, etc.) (collectively, "Projections"). Purchaser acknowledges and agrees that (i) such Projections are being provided solely for the convenience of Purchaser to facilitate its own independent investigation of Seller, (ii) there are uncertainties inherent in attempting to make such Projections, (iii) Purchaser is familiar with such uncertainties, and (iv) Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all Projections (including the reasonableness of the assumptions underlying such Projections).

6.18 IT Migration. From and after the date hereof until one hundred twenty (120) days after the Closing Date, upon Purchaser's request, Seller shall, and shall cause its Affiliates to, use reasonable best efforts to make available all relevant technical staff, employees and representatives



of Seller and its Affiliates, including the Chief Technology Officer of Seller and its Affiliates, to Purchaser and its Affiliates, to (a) assist Purchaser and its Affiliates in understanding all Business Software and Business Accounts, (b) assist with the Integration Plan, (c) transition of all accounts with third party sites necessary to support the Voyager Platform and its associated mobile applications, (d) address the logistics of transferring the Business Software and Business Accounts to Purchaser, including providing Purchaser with access to all credentials to GitHub accounts and other repositories for storage of source code for the Business Software, and (e) any other technical assistance that Purchaser or any of its Affiliates deems reasonably necessary to enable all migrations, integrations and Transactions. Purchaser hereby grants Seller a limited, non-exclusive, non-transferable, non-sublicensable and revocable license to access and use the Business Software for the sole purpose of providing the support to Purchaser as contemplated in this Section 6.18. Seller and its Affiliates may not use, modify, share, disclose or revise such Business Software for any other purpose. Seller shall bear all costs and expenses associated with the provision of such services on or prior to the Closing Date pursuant to this Section 6.18. Purchaser shall bear the reasonable and documented costs and expenses incurred by Seller in connection with the provision of such services during the 120-day period after the Closing Date pursuant to this Section 6.18. Seller can provide no assurance that Seller's employees will elect to remain employed by Seller prior to or following the Closing and Seller will not be required to replace any such resigning employees.

6.19 Confidentiality.

(a) Each Party acknowledges that Confidential Information has been, and in the future will be, provided to it in connection with this Agreement and the Transactions, including under Section 6.2.

(b) Seller acknowledges that from and after the Closing, all non-public information relating to the Acquired Assets and the Assumed Liabilities will be valuable and proprietary to Purchaser and its Affiliates. Seller agrees that, from and after the Closing, Seller will not, and will cause their Affiliates and Advisors not to, directly or indirectly, without the prior consent of Purchaser, disclose to any Person any Confidential Information relating to Purchaser and its Affiliates, the Acquired Assets or the Assumed Liabilities.

(c) Notwithstanding anything to the contrary herein, the provisions of this Section 6.19 will not prohibit any disclosure (i) required by applicable Law, Order or the rules of a securities exchange to which it is subject, (ii) in connection with a regulatory inquiry by a Governmental Body or self-regulatory organization, (iii) as necessary in connection with Seller's bankruptcy process or (iv) to each Party's Advisors who have been informed of the confidential nature of the information and have been instructed to keep such information confidential. Purchaser acknowledges and understands that this Agreement may be publicly filed in the Bankruptcy Court and further made available by Seller to prospective bidders and that, except as prohibited herein, such disclosure will not be deemed to violate any confidentiality obligations owing to Purchaser, whether pursuant to this Agreement or otherwise. Each Party agrees that such Party will be responsible for any breach or violation of the provisions of this Section 6.19 by any of such Party's Affiliates. Each Party acknowledges and agrees that the remedies at law for any breach or threatened breach of this Section 6.19 by Seller or Purchaser are inadequate to protect Purchaser or Seller and its Affiliates, as applicable, and that the damages resulting from any such

breach are not readily susceptible to being measured in monetary terms. Accordingly, without prejudice to any other rights or remedies otherwise available to either Party or its Affiliates, each Party acknowledges and agrees that upon any breach or threatened breach by a Party of the terms and conditions of this Section 6.19, the other Party and its Affiliates, as applicable will be entitled to immediate injunctive relief and to seek an order restraining any threatened or future breach from any court of competent jurisdiction without proof of actual damages or posting of any bond in connection with any such remedy. The provisions of this Section 6.19 will survive the Closing and terminate two (2) years after the Closing Date.

6.20 Acquired Assets Owned by Non-Debtors. To the extent any item set forth in Schedule 6.20 or any other asset used in or relating to the Cryptocurrency custody and trading business of Seller constitutes property of Voyager IP, LLC, and, but for this Section 6.20, is of a type that would constitute an Acquired Asset (disregarding solely for this purpose any reference to “of Seller” or other reference indicating ownership, licensing, holding, leasing or use of any type of Acquired Asset by Seller), Seller shall cause Voyager IP, LLC’s right, title and interest in and to such item or asset to be transferred (for no additional consideration) to Purchaser reasonably promptly after Closing as an Acquired Asset as if transferred at the Closing in accordance with the other provisions of this Agreement, including by designating Voyager IP, LLC as an additional assignor under the Trademark and Domain Name Assignment Agreement.

#### 6.21 Seller Expenses.

(a) Purchaser shall (i) at the Closing bear as a component of the Purchase Price pursuant to Section 2.1(a), without duplication, the Seller Expenses or (ii) if this Agreement is validly terminated in accordance with its terms, pay to Seller, within three (3) Business Days following such termination, cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by Seller in an amount equal to the Seller Expenses; provided that notwithstanding anything to the contrary herein, (A) in no event shall the aggregate amount of Seller Expenses payable by Purchaser hereunder exceed the Seller Expense Cap, (B) any fees and expenses (including reasonable and documented out-of-pocket financial advisor and legal fees, expenses and disbursements) incurred by Seller or any of its Affiliates, or otherwise relating to the activities or operations of Seller or any of its Affiliates, on or prior to the Seller Expense Start Date shall not constitute Seller Expenses, and (C) (x) if the Closing or the termination of this Agreement occurs on or prior to the Seller Expense Start Date, (y) if this Agreement is terminated pursuant to (1) Section 8.1(b) or Section 8.1(c) by Purchaser, or by Seller in circumstances where Purchaser would be entitled to terminate this Agreement pursuant to Section 8.1(e), or (2) Section 8.1(e), Section 8.1(g), Section 8.1(h) or Section 8.1(i), or (z) the Closing does not occur on or prior to the Seller Expense Start Date due to any act or omission by Seller or any of its Affiliates or any material breach of this Agreement by Seller, then in each case the Seller Expenses shall be zero (0).

(b) For purposes of this Agreement, “Seller Expenses” means all reasonable and documented costs, fees, and expenses (including reasonable and documented out-of-pocket financial advisor and legal fees, expenses and disbursements) incurred by or behalf of any Debtor during the period beginning on the Seller Expense Start Date and ending on the earlier of (i) the Closing Date and (ii) the date on which this Agreement is validly terminated in accordance with its terms, in each case (A) solely in connection with maintaining its operations in the Ordinary



Course or by professionals in connection with the Bankruptcy Case, (B) that Seller would not have otherwise incurred if the Closing had occurred on or prior to the Seller Expense Start Date, and (C) which fees and expenses of such professional are approved by the Bankruptcy Court.

## 6.22 Purchaser Expenses.

(a) If this Agreement is terminated (i) by Seller pursuant to Section 8.1(c), in circumstances where Purchaser would be entitled to terminate this Agreement pursuant to Section 8.1(e), or (ii) pursuant to Section 8.1(e), Section 8.1(g), Section 8.1(h) or Section 8.1(i)(ix), then Seller shall pay to Purchaser, within three (3) Business Days following such termination, cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by Purchaser in an amount equal to the Purchaser Expenses; provided that notwithstanding anything to the contrary herein, in no event shall the aggregate amount of Purchaser Expenses payable by Seller hereunder exceed \$5,000,000; provided further that if this Agreement is validly terminated by Seller pursuant to Section 8.1(g) (x) in order for Seller to pursue a Liquidation as a result of and following any Effect with respect to Purchaser's business, financial condition, operations, assets, management, employees, compliance, or liabilities, taken as a whole, or any Effect with respect to Purchaser's Affiliates that has an Effect on Purchaser's business, financial condition, operations, assets, management, employees, compliance, or liabilities, taken as a whole, that, individually or in the aggregate with all other such Effects, would reasonably be expected to (1) prevent or materially impair or materially delay the ability of Purchaser to consummate the Transactions in accordance herewith or (2) materially and adversely affect the Users, Eligible Creditors, or the Acquired Coins on the Binance.US Platform, including following the Closing, as compared to users and Coins on the Binance.US Platform as of the date hereof, and (y) such termination was not effected (1) in connection with a Higher and Better Offer or (2) because the estimated proceeds from such Liquidation are or would reasonably be expected to be greater than the Closing Date Payment (plus the fair market value of any Acquired Coins or any proceeds therefrom, in each case, as determined at the time Seller commences such Liquidation), then no Purchaser Expenses shall be payable.

(b) For purposes of this Agreement, "Liquidation" means any combination of one or more of the following: (i) a plan under chapter 11 of the Bankruptcy Code that provides for sales or liquidation of the Debtors' assets through a transaction (other than a sale of substantially all of the Debtors' assets to one purchaser on a going concern basis), including the Plan, (ii) one or more sales of assets pursuant to section 363 of the Bankruptcy Code other than a sale of substantially all of the Debtors' assets to one purchaser on a going concern basis, (iii) conversion of the Bankruptcy Case to cases under chapter 7 of the Bankruptcy Code, (iv) foreclosure or other exercise of remedies (including a deed in lieu of foreclosure) by or in favor of one or more creditors, (v) abandonment of the Debtors' assets to a creditor, or (vi) a dismissal of the Bankruptcy Cases.

(c) For the purposes of this Agreement, "Purchaser Expenses" means all reasonable and documented fees and expenses (including reasonable and documented out-of-pocket legal fees, expenses and disbursements) incurred by Purchaser since August 5, 2022, in connection with, arising from or related to efforts to purchase the Acquired Assets (as defined in the Bidding Procedures Order), which, for the avoidance of doubt, includes its evaluation,

negotiation and pursuit of the Transactions, this Agreement and the other documents and agreements contemplated hereby (the “Purchaser Bid Process”).

(d) All amounts payable to Purchaser pursuant to Section 6.22(a) upon termination of this Agreement shall be payable in cash by wire transfer of immediately available funds to such bank account as shall be designated by Purchaser in writing, and without the requirement of any notice or demand from Purchaser or any application to or order of the Bankruptcy Court other than the Agreement Order.

## **ARTICLE VII CONDITIONS TO CLOSING**

7.1 Conditions Precedent to the Obligations of Purchaser and Seller. The respective obligations of each Party to consummate the Transactions are subject to the satisfaction (or to the extent permitted by Law, written waiver by Seller and Purchaser) on or prior to the Closing Date, of each of the following conditions:

(a) there shall be no Law or Order (including any temporary restraining order or preliminary or permanent injunction) in effect restraining, enjoining, making illegal or otherwise prohibiting the Transactions;

(b) the Bankruptcy Court shall have entered the Agreement Order, which Agreement Order shall (i) be in form and substance reasonably acceptable to Purchaser, (ii) comply in all respects with Section 5.1(b), and (iii) be a Final Order; and

(c) the Bankruptcy Court shall have entered the Confirmation Order, in form and substance, solely with respect to matters relating to this Agreement or the Transactions, reasonably acceptable to Purchaser, confirming a Plan in form and substance, solely with respect to matters relating to this Agreement or the Transactions, reasonably acceptable to Purchaser, and the Confirmation Order shall be a Final Order.

7.2 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the Transactions are subject to the satisfaction (or to the extent permitted by Law, written waiver by Purchaser in its sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) (i) the representations and warranties of Seller set forth in Article III (in each case, other than the Fundamental Representations and the representations and warranties set forth in Section 3.16(a)) shall be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date, except (x) that representations and warranties that are made as of a specified date need be so true and correct only as of such date and (y) to the extent the failure of such representations and warranties to be true and correct as of such dates has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided that for purposes of the immediately preceding clause (i), the qualifications as to materiality and Material Adverse Effect contained in such representations and warranties shall not be given effect; (ii) the representations and warranties set forth in Section 3.1(a) (*Organization and Qualification*), Section 3.2 (*Authorization of Agreement*), Section 3.3(a)(i) (*Conflicts; Consents*), Section 3.6(a) (*Exclusive Ownership*), and Section 3.14 (*Brokers*) (collectively, the

“Fundamental Representations”) shall be true and correct in all but *de minimis* respects as of the Closing Date as though made on and as of the Closing Date, except that such Fundamental Representations that are made as of a specified date need be true and correct in all but *de minimis* respects only as of such date; and (iii) the representations and warranties set forth in Section 3.16(a) shall be true and correct in all respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date;

(b) Seller shall not have materially breached any of the covenants required to be performed or complied with by Seller under this Agreement on or prior to the Closing; provided that notwithstanding the foregoing, Seller shall have performed or caused to be performed, in all respects, all of the obligations and covenants required by Section 6.15(a) and (b); and

(c) Seller shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 2.4.

7.3 Conditions Precedent to the Obligations of Seller. The obligations of Seller to consummate the Transactions are subject to the satisfaction (or to the extent permitted by Law, written waiver by Seller in its sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) the representations and warranties made by Purchaser in Article IV shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except (x) that representations and warranties that are made as of a specified date need be so true and correct only as of such date and (y) where the failure of such representations or warranties to be so true and correct has not and would not, individually or in the aggregate, reasonably be expected to prevent or materially impair or delay the ability of Purchaser to consummate the Transactions; provided that for purposes of this Section 7.3(a), the qualifications as to materiality, material adverse effect and words of similar import contained in such representations and warranties shall not be given effect;

(b) Purchaser shall not have materially breached any of the covenants required to be performed or complied with by Purchaser under this Agreement on or prior to the Closing; and

(c) Purchaser shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 2.5.

7.4 Waiver of Conditions. Upon the occurrence of the Closing, any condition set forth in this Article VII that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the Party having the benefit of such condition as of and after the Closing. Neither Purchaser nor Seller may rely on the failure of any condition set forth in this Article VII, as applicable, to be satisfied if such failure was caused by such Party’s material breach of any covenant, representation or warranty hereunder.

## TERMINATION

8.1 Termination of Agreement. This Agreement may be terminated only in accordance with this Section 8.1. This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of Seller and Purchaser;
- (b) by written notice of either Purchaser or Seller, upon the issuance of an Order by a Governmental Body restraining, enjoining or otherwise prohibiting the consummation of the Transactions or declaring unlawful the Transactions, and such Order having become final, binding and non-appealable; provided that no termination may be made by a Party under this Section 8.1(b) if the issuance of such Order was caused by such Party's material breach of any of its representation, warranties, covenants or agreements hereunder;
- (c) by written notice of either Purchaser or Seller, if the Closing shall not have occurred on or before the date that is four (4) months following the date hereof (the "Outside Date"); provided that Purchaser may, at its election and upon written notice to Seller, elect to extend the Outside Date for an additional thirty (30) days (such extended date, the "Extended Outside Date" ); provided further that a Party shall not be permitted to terminate this Agreement, or extend the Outside Date, pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date or Extended Outside Date, as applicable, was caused by such Party's material breach of any of its representation, warranties, covenants or agreements;
- (d) by written notice from Seller to Purchaser, upon a breach of any covenant or agreement on the part of Purchaser, or if any representation or warranty of Purchaser is or will have become untrue, in each case, such that the conditions set forth in Section 7.1 or Section 7.3 would not be satisfied, including a breach of Purchaser's obligation to consummate the Closing; provided that (i) if such breach is curable by Purchaser then Seller may not terminate this Agreement under this Section 8.1(d) unless such breach has not been cured by the date which is the earlier of (A) two (2) Business Days prior to the Outside Date or Extended Outside Date, if any, and (B) thirty (30) days after Seller notifies Purchaser of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(d) will not be available to Seller at any time that Seller is in material breach of, any covenant, representation or warranty hereunder;
- (e) by written notice from Purchaser to Seller, upon a breach of any covenant or agreement on the part of Seller, or if any representation or warranty of Seller is or will have become untrue, in each case, such that the conditions set forth in Section 7.2(a) or Section 7.2(b) would not be satisfied; provided that (i) if such breach is curable by Seller then Purchaser may not terminate this Agreement under this Section 8.1(e) unless such breach has not been cured by the date which is the earlier of (A) two (2) Business Days prior to the Outside Date or Extended Outside Date, if any, and (B) thirty (30) days after Purchaser notifies Seller of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(e) will not be available to Purchaser at any time that Purchaser is in material breach of, any covenant, representation or warranty hereunder;

(f) by written notice from Seller to Purchaser, if (A) all of the conditions set forth in Sections 7.1 and 7.2 have been and continue to be satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived, (B) Seller has confirmed in writing to Purchaser that all of the conditions set forth in Sections 7.1 and 7.2 have been and continue to be satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived and Seller stands ready, willing and able to consummate the Closing so, and (C) Purchaser fails to consummate the Closing within three (3) Business Days of its receipt of such written notice from Seller;

(g) by written notice from Seller to Purchaser, which may be revocable in the sole discretion of Seller by written notice from Seller to Purchaser within five (5) Business Days, if Seller or the board of directors (or similar governing body) of Seller determine, in good faith and after consultation with its legal and other advisors, that proceeding with the Transactions or failing to terminate this Agreement would be inconsistent with its or such Person's or body's fiduciary duties; provided that if such determination is in connection with an Acquisition Proposal, Seller may only terminate this Agreement pursuant to this Section 8.1(g) upon compliance with the provisions set forth in Section 5.2(c);

(h) by written notice from Purchaser to Seller, if (A) Seller seeks or otherwise take material steps in furtherance of, or do not use reasonable best efforts to oppose any other Person in seeking, an order of the Bankruptcy Court dismissing the Bankruptcy Case or converting the Bankruptcy Case to a petition for relief under Chapter 7 of the Bankruptcy Code, (B) the Bankruptcy Case is dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the financial affairs or reorganization of Seller is appointed in the Bankruptcy Case or (C) the Bankruptcy Court enters an order pursuant to section 362 of the Bankruptcy Code lifting the automatic stay with respect to any Acquired Assets; or

(i) by written notice from Purchaser to Seller, if:

(i) the Agreement Order is not entered by January 6, 2023;

(ii) the Plan Solicitation Motion and the Amended Disclosure Statement are not filed with the Bankruptcy Court by December 21, 2022;

(iii) the Plan Solicitation Order is not entered by January 6, 2023;

(iv) the Confirmation Order is not entered by March 1, 2023;

(v) Seller or any of the other Debtors file any motions, pleadings, notices or other documents with the Bankruptcy Court in material breach of Section 5.7;

(vi) Seller enters into one or more Alternative Transactions with one or more Persons other than Purchaser, or the Bankruptcy Court approves an Alternative Transaction other than with Purchaser;



(vii) Seller has delivered a Higher Offer Determination Notice to Purchaser;

(viii) Seller or its Affiliates or Advisors have committed a breach of Section 5.1(a); or

(ix) Seller or its Affiliates or Advisors have committed a breach of, Section 5.2; provided that (without modifying Purchaser's rights to terminate this Agreement under any other Section of this Agreement) Purchaser shall not be entitled to terminate this Agreement pursuant to this Section 8.1(i)(ix) following entry of the Agreement Order by the Bankruptcy Court.

## 8.2 Effect of Termination.

(a) In the event of termination of this Agreement pursuant to Section 8.1, this Agreement shall forthwith become void and there shall be no Liability on the part of either Party or any of its partners, officers, directors or shareholders; provided that Section 2.2, Section 6.2(b), Section 6.12(c), Section 6.19, Section 6.21, Section 6.22, this Section 8.2, Section 8.3, Section 8.4 and Article X (other than Section 10.12 with respect to the availability of an injunction or injunctions, specific performance or other equitable relief to cause the Closing to occur, which shall terminate upon any termination of this Agreement) and the definitions referenced in such Sections and Articles, even if not included in such Sections and Articles, and, for the avoidance of doubt, the Confidentiality Agreement, shall survive any such termination; provided further that, subject to Section 8.3, no termination will relieve either Party from any Liability for damages (including damages based on the loss of the economic benefits of the Transactions, including the Purchase Price, to Seller), losses, costs, or expenses (including reasonable legal fees and expenses) resulting from any willful breach of this Agreement by such Party prior to any such termination or Fraud by such Party. For purposes of this Agreement, "willful breach" means with respect to any breaches or failures to perform any of the covenants or other agreements contained herein, a material breach that is a consequence of an act or failure to act undertaken by the breaching Person with actual knowledge (which shall not be deemed to include knowledge of facts that a Person acting reasonably should have, based on reasonable due inquiry) that such Person's act or failure to act would, or would reasonably be expected to, result in or constitute a material breach of this Agreement.

(b) If this Agreement is terminated prior to the Closing, at any time following such termination, promptly following the written request of Seller, Purchaser shall, as soon as practicable, return, destroy or permanently erase (on all forms of physical and electronic media) all Acquired User Data transferred to Purchaser prior to the Closing in accordance with Section 6.6(a) or otherwise in connection with the KYC Procedures and permanently close and remove any account established with or with reference to any Acquired User Data, and, upon written request from Seller following any destruction or erasure of data, provide an officer's certificate certifying as to such destruction or erasure. Such destruction or erasure shall be in accordance with all Laws regarding data disposal, and the eradication and destruction technique used will be appropriate for the storage medium and format. Notwithstanding the foregoing, Purchaser shall have the right to retain a copy of the Acquired User Data to the extent required for legal, regulatory or compliance purposes, so long as such Acquired User Data is kept confidential

as required under this Agreement and the Confidentiality Agreement and is used for no other purpose.

8.3 Reverse Termination Fee. In the event that (a) the conditions set forth in Sections 7.1(b), 7.1(c), and 7.2 have been satisfied or duly waived and (b) (i) this Agreement is validly terminated in accordance with Section 8.1(b) or Section 8.1(c), (ii) Purchaser fails to consummate the Closing by the Outside Date or the Extended Outside Date, as applicable, as a result of the failure of the conditions set forth in Section 7.1(a), or (iii) this Agreement is terminated pursuant to Section 8.1(g) in connection with and following a Purchaser Development and not in connection with a Higher and Better Offer, then, in any such case, within three (3) Business Days following such valid termination the Deposit (including all received investment income, if any) shall be released to Seller (such release, which, for the avoidance of doubt, shall be equal to and shall not exceed \$10,000,000 in the aggregate, the "Reverse Termination Fee").

8.4 Further Effect of Termination. Notwithstanding anything to the contrary in this Agreement, the Confidentiality Agreement or any other document or instrument delivered by either Party in connection with the Transactions, but subject in all respects to the other provisions of this Section 8.4:

(a) Seller, on behalf of itself and the Seller Parties, acknowledges and agrees that any disbursement of the Deposit to Seller pursuant to Section 2.2(b), payment of any Seller Expenses to Seller pursuant to Section 6.21 or payment of the Reverse Termination Fee pursuant to Section 8.3 shall be deemed liquidated damages and shall be the sole and exclusive recourse of Seller and the Seller Parties against Purchaser and the Purchaser Group for any loss or damage suffered in connection with, relating to or arising out of this Agreement or the Transactions (including circumstances giving rise to any termination of this Agreement) and including losses or damages suffered as a result of any breach of this Agreement or any representation, warranty, covenant or agreement contained herein by Purchaser or the failure of the Transactions to be consummated (whether or not for intentional, unintentional or willful breach or otherwise), except in the event Seller is entitled to elect specific performance of Purchaser's obligations (including to consummate the Transactions) pursuant to Section 10.12.

(b) In the event of a valid termination of this Agreement pursuant to Section 8.1, if Seller is entitled to receive the Deposit pursuant to Section 2.2, payment of any Seller Expenses pursuant to Section 6.21, or payment of the Reverse Termination Fee pursuant to Section 8.3, then, upon release of the Deposit to Seller in accordance with Section 2.2(b), payment of such Seller Expenses pursuant to Section 6.21 or payment of the Reverse Termination Fee pursuant to Section 8.3, as applicable, (i) Purchaser and the Purchaser Group shall not have any further liability or obligation relating to or arising out of this Agreement or the Transactions (including any liability or obligation for monetary damages) and (ii) neither Seller nor any of the Seller Parties will have any right of recovery, whether arising under contract Law, tort Law or any other theory of Law, against, and no personal liability shall attach to Purchaser or any other member of the Purchaser Group, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil, by the enforcement of any assessment or by any legal or equitable Action, by virtue of any statute, regulation or applicable Law, or otherwise.



(c) (i) The maximum aggregate liability of Purchaser and the Purchaser Group in connection with this Agreement and the Transactions shall be limited to the sum of (x) (1) solely where and to the extent the Deposit is forfeited by Purchaser in accordance with Section 2.2(b), the Deposit or (2) without duplication of any forfeiture of the Deposit pursuant to Section 2.2(b) and solely where and to the extent the Reverse Termination Fee is payable in accordance with Section 8.3, the Reverse Termination Fee, plus (y) solely where and to the extent the Seller Expenses are payable in accordance with Section 6.21, the Seller Expenses; (ii) in no event shall Purchaser be obligated to pay any of the Deposit, the Seller Expenses or the Reverse Termination Fee on more than one occasion and (iii) under no circumstances will any of Seller or any of the Seller Parties seek, obtain or accept, monetary damages or losses of any kind (including damages for the loss of the benefit of the bargain, opportunity cost, loss of premium, time value of money or otherwise, or any consequential, special, expectancy, indirect or punitive damages or any losses or damages based on a multiple or multiplier) in connection with, relating to or arising out of the termination of this Agreement in excess of the sum of (A) (1) solely where and to the extent the Deposit is forfeited in accordance with Section 2.2(b), the Deposit or (2) without duplication of any forfeiture of the Deposit pursuant to Section 2.2(b) and solely where and to the extent the Reverse Termination Fee is payable in accordance with Section 8.3, the Reverse Termination Fee, plus (B) solely where and to the extent the Seller Expenses are payable in accordance with Section 6.21, the Seller Expenses; provided, however, that the foregoing shall not be interpreted to limit in any way Seller's right to require specific performance of Purchaser's obligations (including to consummate the Transactions) pursuant to Section 10.12 in the event this Agreement has not been terminated and to the extent such specific performance is available to Seller under Section 10.12. Notwithstanding anything to the contrary herein or otherwise, in no event shall Seller be entitled to receive both (1) the forfeiture of the Deposit together with all received investment income, if any, pursuant to Section 2.2(b) and (2) the payment of the Reverse Termination Fee pursuant to Section 8.3 (it being acknowledged that the payment of the Reverse Termination Fee pursuant to Section 8.3 includes forfeiture of the Deposit together with all received investment income, if any).

(d) Seller may seek both payment of monetary damages (including the Reverse Termination Fee, the Deposit or the Seller Expenses) in accordance with this Agreement, on the one hand, and specific performance of Purchaser's obligation to consummate the Closing pursuant to Section 10.12; provided that in no event shall Seller be entitled to receive both (1) payment of monetary damages (including the Reverse Termination Fee, the Deposit or the Seller Expenses) in accordance with this Agreement (and for the avoidance of doubt, subject to the other limitations thereon set forth in this Section 8.4) and (2) such specific performance pursuant to Section 10.12.

## ARTICLE IX

## TAXES

9.1 Transfer Taxes. Any sales, use, purchase, transfer, deed, stamp, documentary or other similar Taxes and recording charges (but excluding any such Taxes or charges that are based in whole or in part upon income, profits or gains) payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the Transactions (the “Transfer Taxes”) shall be borne and timely paid by Purchaser, and Purchaser shall timely file all Tax Returns related to any Transfer Taxes.

9.2 Cooperation. Purchaser and Seller shall reasonably cooperate, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any Action, audit, litigation, or other proceeding with respect to Taxes. In furtherance thereof, Purchaser and Seller shall reasonably cooperate in good faith to determine and agree to the tax treatment to each of them and to the Users of the Transactions, provided that agreeing on consistent tax treatment shall not be a closing condition and neither Party shall have any liability under this Agreement if the Parties are unable to so agree.

9.3 Preparation of Tax Returns and Payment of Taxes.

(a) Except as otherwise provided by Section 9.1, Seller shall prepare and timely file (i) all Tax Returns with respect to the Acquired Assets for any Tax period ending on or before the Closing Date and (ii) all Tax Returns of Seller (including, for the avoidance of doubt, for any Straddle Period, but not including, for the avoidance of doubt, information returns). With respect to any such Tax Return that reflects any Tax that is an Assumed Liability (not including, for the avoidance of doubt, any income Tax Return of Seller or Seller's Affiliates for any tax period and not including any information Tax Return), Seller shall use reasonable best efforts to (x) prepare such Tax Returns consistent with past practice, except as otherwise required by applicable Law, (y) provide Purchaser with a draft of such Tax Returns at least ten (10) days prior to the filing of any such Tax Return, and (z) incorporate any changes reasonably requested by Purchaser with respect to such Tax Returns prior to filing. Except to the extent any Tax reflected on a return required to be prepared and filed by Seller pursuant to this Section 9.3 constitutes an Assumed Liability, Seller shall be responsible for paying any Taxes reflected on any Tax Return that Seller is obligated to prepare and file under this Section 9.3(a). Notwithstanding anything herein to the contrary: (i) nothing in this Agreement shall give Purchaser or its Affiliates any rights with respect to or control over any income Tax Return of Seller or Seller's Affiliates for any tax period (any such Tax Return, a "Seller Income Tax Return"), and (ii) if any Governmental Body approaches (including by way of initiating any audit, investigation, or other proceeding) either Party with respect to the income Tax characterization of the Transactions (any such action, a "Transaction-Related Action"), then the Party in receipt of such notice shall reasonably promptly inform the other Party of such Transaction-Related Action.

(b) Purchaser shall prepare and timely file all Tax Returns with respect to the Acquired Assets that are not addressed by Section 9.3(a) (including, for the avoidance of doubt, all Tax Returns with respect to the Acquired Assets for any taxable period beginning after the Closing Date). With respect to any such Tax Return for any Straddle Period that reflects any Tax that is an Excluded Liability (each, a "Relevant Tax Return"), Purchaser shall prepare such Relevant Tax Returns and shall provide Seller with a draft of such Relevant Tax Returns at least ten (10) days prior to the filing of any such Tax Return. Purchaser shall incorporate any changes reasonably requested by Seller with respect to such Tax Returns. Seller shall be responsible for paying any Taxes reflected on any Tax Return that Purchaser is obligated to prepare and file under this Section 9.3(b) to the extent such Taxes constitute Excluded Liabilities.

(c) Purchaser shall not file any amendment to any previously filed Tax Return with respect to the Acquired Assets for any Pre-Closing Tax Period that would have the effect of increasing any Tax due for a Pre-Closing Tax Period or portion of a Straddle Period ending on the Closing Date, in each case, that is an Excluded Liability, unless Purchaser receives an opinion

from a nationally recognized accounting firm or law firm that there is no adequate “reporting position” with respect to any previously-asserted position with respect to Taxes. Upon such determination, Purchaser shall provide no less than forty-five (45) days’ notice of such position before filing any such Tax Return. In the event Seller disagrees with such Tax position, and the dispute cannot be resolved between the Parties, such dispute shall be submitted to an independent national accounting firm or law firm for resolution, with the costs of such resolution to be evenly split by Purchaser and Seller. The determination of such independent national accounting firm or law firm shall be binding on both Parties and any Tax Return shall be filed consistently with such resolution.

(d) For all purposes under this Agreement, in respect of any Straddle Period, the portion of Taxes that are allocable to the portion of the Straddle Period ending on the Closing Date will be: (i) in the case of any Taxes other than those described in clause (ii) below, deemed to include the amount that would be payable if the relevant Straddle Period ended on and included the Closing Date; and (ii) in the case of any property Taxes and other similar Taxes, deemed to include the amount of such Tax for the entire Straddle Period multiplied by a fraction the numerator of which is the number of days in the Straddle Period ending on and including the Closing Date and the denominator of which is the number of days in the entire Straddle Period.

(e) Notwithstanding anything herein to the contrary, prior to the Closing, Seller and its Affiliates may contribute, assign or otherwise transfer the 3AC Loan to any third-party purchaser, trust or other entity.

## ARTICLE X

### MISCELLANEOUS

10.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such Party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, then for five (5) years following the Closing Date, and nothing in this Section 10.1 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Purchaser and Seller acknowledge and agree, on their own behalf and on behalf of the Purchaser Group or the Seller Parties, as the case may be, that the agreements contained in this Section 10.1 (a) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing for five (5) years and (b) are an integral part of the Transactions and that, without the agreements set forth in this Section 10.1, neither of the Parties would enter into this Agreement.

10.2 Expenses. Whether or not the Closing takes place, except as otherwise provided herein (including, for the avoidance of doubt, Section 8.2), all fees, costs and expenses (including fees, costs and expenses of Advisors) incurred in connection with the negotiation of this Agreement and the other agreements contemplated hereby, the performance of this Agreement and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby will be paid by the Party incurring such fees, costs and expenses; it being acknowledged and agreed that all Transfer Taxes will be allocated pursuant to Section 9.1 and (c) all Cure Costs will be allocated pursuant to Section 5.4.

10.3 Notices. Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail, (c) the day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case, to the respective Party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such Party may specify by written notice to the other Party.

Notices to Purchaser:

BAM Trading Services, Inc. d/b/a Binance.us  
611 Cowper Street, Suite 400  
Palo Alto, CA 94301  
Attention: Norman Reed, General Counsel  
Email: norman.reed@binance.us;  
legal@binance.us

with a copy to (which shall not constitute notice):

Latham & Watkins LLP  
1271 Avenue of the Americas  
New York, NY 10020  
Attention: Robert M. Katz  
Daniel Mun  
Adam J. Goldberg  
Andrew D. Sorkin  
Email: Robert.Katz@lw.com  
Daniel.Mun@lw.com  
Adam.Goldberg@lw.com  
Andrew.Sorkin@lw.com

Notices to Seller:

Voyager Digital, LLC  
33 Irving Place, 3rd Floor  
New York, NY 10003  
Attention: Stephen Ehrlich  
David Brosgol  
Email: sehrlich@investvoyager.com  
dbrosgol@investvoyager.com

with a copy to (which shall not constitute notice):

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Attention: Joshua A. Sussberg, P.C.  
Christine A. Okike, P.C.  
Christopher Marcus, P.C.  
Jonathan L. Davis, P.C.  
Steve Toth  
Eduardo M. Leal  
Allyson B. Smith  
Email: joshua.sussberg@kirkland.com  
christine.okike@kirkland.com  
cmarcus@kirkland.com  
jonathan.davis@kirkland.com  
steve.toth@kirkland.com  
eduardo.leal@kirkland.com  
allyson.smith@kirkland.com

10.4 Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, subject to the terms of the Bidding Procedures Order (with respect to the matters covered thereby) and the entry and terms of the Agreement Order, the Plan and the Confirmation Order, Seller, and shall inure to the benefit of and be so binding on the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 case; provided that neither this Agreement nor any of the rights or obligations hereunder may be assigned or delegated without the prior written consent of Purchaser and Seller, and any attempted assignment or delegation without such prior written consent shall be null and void; provided further that Purchaser shall be entitled to assign or delegate this Agreement or all or any part of its rights or obligations hereunder to any of its Affiliates; provided further that in each case no such assignment or delegation shall relieve Purchaser of any of its obligations hereunder.

10.5 Amendment and Waiver. Any provision of this Agreement or the Schedules or exhibits hereto may be (a) amended only in a writing signed by Purchaser and Seller or (b) waived only in a writing executed by the Person against which enforcement of such waiver is sought. No waiver of any provision hereunder or any breach or default thereof will extend to or affect in any

way any other provision or prior or subsequent breach or default. Except where a specific period for action or inaction is provided herein, no delay on the part of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

10.6 Third Party Beneficiaries. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement is intended or will be construed to give any Person other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

10.7 Non-Recourse. This Agreement may only be enforced against, and any Action based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future direct or indirect equityholder, shareholder, member, partner, manager, director, officer, employee, Affiliate, agent or Advisor of either Party will have any Liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or Liabilities of any of the parties to this Agreement or for any Action based upon, arising out of or related to this Agreement.

10.8 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law in any jurisdiction, such provision will be ineffective only to the extent of such prohibition or invalidity in such jurisdiction, without invalidating the remainder of such provision or the remaining provisions of this Agreement or in any other jurisdiction. To the extent permitted by applicable Law, each Party waives any provision of Law that renders any provision of this Agreement invalid or unenforceable in any respect.

10.9 Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Person. The table of contents and headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and will in no way restrict or otherwise modify any of the terms or provisions hereof.

10.10 Schedules. The Schedules have been arranged for purposes of convenience in separately numbered sections corresponding to the sections of this Agreement; however, each section of the Schedules will be deemed to incorporate by reference all information disclosed in any other section of the Schedules, to the extent it is readily apparent on its face without the need for a cross-reference. Capitalized terms used in the Schedules and not otherwise defined therein have the meanings given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Schedules or the attached exhibits is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course, and neither Party will use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Schedules or exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter not set forth or



included in this Agreement, the Schedules or exhibits is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course. In addition, matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement, or item. The information contained in this Agreement, in the Schedules and exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by either Party to any third party of any matter whatsoever, including any violation of Law or breach of Contract.

10.11 Complete Agreement. This Agreement, together with the Confidentiality Agreement and any other agreements expressly referred to herein or therein, contains the entire agreement of the parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transactions and supersedes all prior agreements between the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transactions. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, the terms and provisions of the execution version of this Agreement will control and prior drafts of this Agreement and the documents referenced herein will not be considered or analyzed for any purpose (including in support of parol evidence proffered by any Person in connection with this Agreement), will be deemed not to provide any evidence as to the meaning of the provisions hereof or the intent of the Parties with respect hereto and will be deemed joint work product of the Parties.

10.12 Specific Performance. The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if either of the Parties fails to take any action required of it hereunder to consummate the Transactions. It is accordingly agreed that (a) the Parties will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 10.13 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the Transactions and without that right, neither Seller nor Purchaser would have entered into this Agreement. The Parties acknowledge and agree that either Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.12 will not be required to provide any bond or other security in connection with any such Order. Except as limited by Section 8.4(d), (i) the remedies available to Seller pursuant to this Section 10.12 will be in addition to any other remedy to which they were entitled at law or in equity, and (ii) the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit Seller from seeking to collect or collecting damages. If, prior to the Outside Date or Extended Outside Date, if any, either Party brings any action, in each case in accordance with Section 10.13, to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date or Extended Outside Date, if any, will automatically be extended



(y) for the period during which such action is pending, plus ten (10) Business Days or (z) by such other time period established by the court presiding over such action, as the case may be.

10.13 Jurisdiction and Exclusive Venue. Each of the Parties irrevocably agrees that any Action that may be based upon, arising out of, or related to this Agreement or the negotiation, execution or performance of this Agreement and the Transactions brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) if the Bankruptcy Court is unwilling or unable to hear such Action, in the Delaware Chancery Court and any state court sitting in the State of Delaware to which an appeal from the Delaware Chancery Court may be validly taken (or, if the Delaware Chancery Court declines to accept jurisdiction over a particular matter, any state or federal court within the state of Delaware) ((a) and (b), the “Chosen Courts”), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any such Action arising out of or relating to this Agreement and the Transactions. Each of the Parties agrees not to commence any Action relating thereto except in the Chosen Courts, other than Actions in any court of competent jurisdiction to enforce any Order, decree or award rendered by any Chosen Court, and no Party will file a motion to dismiss any Action filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of *forum non-conveniens*. The Parties irrevocably agree that venue would be proper in any of the Chosen Courts, and hereby irrevocably waive any objection that any such court is an improper or inconvenient forum for the resolution of such Action. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 10.3. Nothing in this Agreement will affect the right of either Party to serve process in any other manner permitted by Law.

10.14 Governing Law; Waiver of Jury Trial.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Action that may be based upon, arising out of or related to this Agreement or the negotiation, execution or performance of this Agreement or the Transactions will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, THE DOCUMENTS AND AGREEMENTS CONTEMPLATED HEREBY AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION BASED ON, ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE

AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 No Right of Set-Off. Purchaser, on its own behalf and on behalf the Purchaser Group and its and their respective successors and permitted assigns, hereby waives any rights of set-off, netting, offset, recoupment or similar rights that Purchaser, any member of the Purchaser Group or any of its or their respective successors and permitted assigns has or may have with respect to the payment of the Purchase Price or any other payments to be made by Purchaser pursuant to this Agreement or any other document or instrument delivered by Purchaser in connection herewith.

10.16 Counterparts and PDF. This Agreement and any other agreements referred to herein or therein, and any amendments hereto or thereto, may be executed in multiple counterparts, any one of which need not contain the signature of more than one party hereto or thereto, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a .PDF or other electronic transmission, will be treated in all manner and respects as an original Contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page to this Agreement or any agreement or instrument contemplated hereby, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining the effectiveness of such signature. At the request of any party or pursuant to any such Contract, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such Contract will raise the use of a .PDF or other electronic transmission to deliver a signature or the fact that any signature or Contract was transmitted or communicated through the use of PDF or other electronic transmission as a defense to the formation of a Contract and each such party forever waives any such defense.

10.17 Publicity. The initial press release regarding this Agreement and the Transactions (the “Press Release”) shall be made promptly following the execution and delivery of this Agreement and shall be in such form as the Parties mutually agree. Except as contemplated by the Commercial Covenants, and subject in all respects to Section 10.19, none of Seller and the Seller Parties shall issue any press release or public announcement (directly or indirectly) concerning this Agreement, the Transactions, the Acquired Assets, the Assumed Liabilities, the Purchaser Bid Process or any other matters related thereto or arising in connection therewith without obtaining the prior written approval of Purchaser (which approval will not be unreasonably withheld, conditioned or delayed) unless, (a) in the reasonable judgment of Seller after consultation with counsel (who may be in-house counsel), disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or the Plan or (b) to correct any misstatement of fact made by Purchaser in any communication pursuant to the immediate next sentence; provided that Seller shall use its

reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with Purchaser with respect to the disclosure thereof. Following the publication of the Press Release, Purchaser shall be permitted to make one or more public statements or issue one or more press releases, in each case, regarding the Acquired Assets and the Assumed Liabilities, this Agreement, the Transactions and the Purchaser Bid Process or any other matter related thereto or arising therefrom or otherwise in connection therewith to the extent not in violation of the Confidentiality Agreement and not in disparagement of Seller or any Seller Party; provided that Purchaser shall use its reasonable best efforts (considered in light of the circumstances in which such disclosure is to be made) to consult in good faith with Seller prior to making any such disclosure.

10.18 Bulk Sales Laws. The Parties intend that pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any Encumbrances in the Acquired Assets including any liens or claims arising out of the bulk transfer laws except Permitted Encumbrances, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Confirmation Order. In furtherance of the foregoing, to the extent permitted by applicable Laws, each Party hereby waives compliance by the Parties with the “bulk sales,” “bulk transfers” or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the Transactions.

10.19 Fiduciary Obligations. Nothing in this Agreement, or any document related to the Transactions, will require Seller or any of its managers, officers or members, in each case, in their capacity as such, to take any action, or to refrain from taking any action, to the extent inconsistent with their fiduciary obligations; provided, however, that no such action or inaction shall be deemed to prevent Purchaser from exercising any termination rights it may have hereunder as a result of such action or inaction.

10.20 No Solicitation. This Agreement, the Plan and the transactions contemplated herein and therein are the product of negotiations between the Parties. Notwithstanding anything herein to the contrary, this Agreement is not, and shall not be deemed to be, (a) a solicitation of votes for the acceptance of the Plan or any other plan of reorganization for the purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise or (b) an offer for the issuance, purchase, sale, exchange, hypothecation, or other transfer of securities or a solicitation of an offer to purchase or otherwise acquire securities for purposes of the Securities Act or the Exchange Act and Seller will not solicit acceptances of the Plan from any party until such party has been provided with copies of a disclosure statement containing adequate information as required by section 1125 of the Bankruptcy Code.

10.21 Acknowledgment. Notwithstanding anything in this Agreement to the contrary (including Section 3.17, Section 3.18, Section 4.10, Section 4.11, Section 6.17 and Section 10.1), nothing herein shall relieve any Person from any Liability on account of Fraud.

## ARTICLE XI

### ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS

#### 11.1 Certain Definitions.

(a) “3AC Loan” means that certain Master Loan Agreement, dated March 4, 2022, by and between Three Arrows Capital, Ltd., as borrower, and Seller and HTC Trading, Inc., as lenders, and Seller in its capacity as administrative agent for the lenders.

(b) “Acquired Coins” means, collectively, all Seller Held Coins (other than Withheld Coins) as of the Rebalancing Date and following the completion of the Rebalancing Exercise in accordance with this Agreement, and after taking into account gas or other transaction fees incurred and paid by Seller in connection with transferring such Coins to Purchaser in accordance with Section 2.4(b).

(c) “Acquired Coins Value” means, with respect to any Acquired Coin of any type, the VWAP of such Coin determined as of two Business Days prior to the Rebalancing Date.

(d) “Action” means any action, claim (including a counterclaim, cross-claim, or defense), complaint, summons, suit, litigation, arbitration, third-party mediation, audit, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination, assessment, notice of violation, citation or investigation, of any kind whatsoever (civil, criminal, administrative, regulatory, investigative, appellate or otherwise), regardless of the legal theory under which such Liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory, commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body.

(e) “Additional Bankruptcy Distributions” means any distributions proposed to be made by the Debtors or any successor thereto to Users or Eligible Creditors after the Closing Date, whether made pursuant to the Plan (including distributions in cash or Coins) or otherwise.

(f) “Advisors” means, with respect to any Person, any directors, officers, employees, investment bankers, financial advisors, accountants, agents, attorneys, consultants, or other representatives of such Person.

(g) “Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

(h) “Alternative Transaction” means any transaction (or series of transactions), whether direct or indirect, concerning a sale, merger, acquisition, issuance, financing, recapitalization, reorganization, liquidation or disposition of Seller or any of its Affiliates or any

portion of the equity interests or any material portion of the assets thereof (in any form of transaction, whether by merger, sale of assets or equity or otherwise).

(i) “Bidding Procedures Order” means the *Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Debtors’ Sale, Disclosure Statement, and Plan Confirmation and (V) Granting Related Relief* [Docket No. 248].

(j) “Binance.US Platform” means Purchaser’s and its Affiliates’ Binance.US Cryptocurrency savings and trading platform or any successor platform thereto.

(k) “Business Accounts” means any and all accounts or registries that Seller owns, maintains or controls with third party vendors, software providers, service providers and other similar third parties that is related to the businesses of Seller.

(l) “Business Day” means any day other than a Saturday, Sunday or other day on which banks in New York City, New York are authorized or required by Law to be closed.

(m) “Business Software” means any and all proprietary Software owned by (or purported to be owned by) Seller that is related to the businesses of Seller, other than the VGX Token Smart Contracts.

(n) “Cash and Cash Equivalents” means all of Seller’s cash (including deposits in transit, demand deposits, money markets or similar accounts), checking account balances, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities, or any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held.

(o) “Code” means the United States Internal Revenue Code of 1986.

(p) “Coin” means, with respect to any type of Cryptocurrency, one coin or token or full unit of such Cryptocurrency (*e.g.*, one (1) Bitcoin); provided that, notwithstanding anything to the contrary herein, for purposes of this Agreement, (i) references to “Coins” shall mean more than one Coin and may include fractional Coins in excess of one (1) Coin, and (ii) as the context requires, “Coin” may refer to a fraction of one (1) Coin.

(q) “Commercial Covenants” means, collectively, Sections 6.6, 6.10, 6.11, 6.12, 6.13, 6.14 and 6.15.

(r) “Confidential Information” means any information relating to the business, financial or other affairs (including future plans and targets) of either Party or any of its Affiliates; provided, however, that “Confidential Information” will not include any information that (i) is or becomes (other than as a result of disclosure by either Party or any of its Affiliates in violation of this Agreement) generally available to, or known by, the public, (ii) is independently developed by a Party or any of its Affiliates without use of or reference to information that would be “Confidential Information” but for the exclusions set forth in this proviso or (iii) is received by a



Party or any of its Affiliates from a third party not known by such receiving Party or any of its Affiliates after reasonable inquiry to be bound by a duty of confidentiality to such other Party or any of its Affiliates with respect to such information.

(s) “Confidentiality Agreement” means that certain letter agreement, dated as of August 2, 2022, by and between Parent and BAM Management US Holdings, Inc.

(t) “Confirmation Order” means an Order of the Bankruptcy Court reasonably acceptable to the Parties pursuant to section 1129 of the Bankruptcy Code, which Order shall, among other things and without limitation, (A) confirm the Plan in a form reasonably acceptable to, solely to the extent related to this Agreement and the Transactions (but not with respect to the matters contemplated by Section 6.11(c)), Purchaser and Seller, as may have been amended, supplemented or otherwise modified, solely to the extent related to this Agreement and the Transactions (but not with respect to the matters contemplated by Section 6.11(c)), with the consent of Purchaser (such consent not to be unreasonably withheld, delayed or conditioned), (B) approve, pursuant to sections 105, 363, 365, 1129, 1141 and 1142 of the Bankruptcy Code, (i) the execution, delivery and performance by Seller of this Agreement, (ii) the sale of the Acquired Assets to Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (iii) the performance by Seller of its obligations under this Agreement, (C) authorize and empower Seller to assume and assign to Purchaser the Assigned Contracts, (D) find that Purchaser is a “good faith” buyer within the meaning of section 363(m) of the Bankruptcy Code, find that Purchaser is not a successor to Seller, and grant Purchaser the protections of section 363(m) of the Bankruptcy Code, (E) find that Purchaser shall have no Liability or responsibility for any Liability or other obligation of Seller arising under or related to the Acquired Assets other than as expressly set forth in this Agreement, including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, environmental, successor, or transferee Liability, labor law, de facto merger, or substantial continuity (including under applicable Money Transmitter Requirements or any securities or commodities Laws of any Governmental Body), (F) find that Purchaser has provided adequate assurance (as that term is used in section 365 of the Bankruptcy Code) of future performance in connection with the assumption of the Assigned Contracts, (G) find that Purchaser shall have no Liability for any Excluded Liability, and (H) find that Seller has title to, and the ability to sell, transfer and assign, Acquired Coins and Additional Bankruptcy Distributions, in each case, in accordance with the terms and conditions hereof.

(u) “Consent” means any approval, consent, ratification, permission, waiver or authorization, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

(v) “Contract” means any contract, indenture, note, bond, lease, sublease, mortgage, agreement, guarantee, or other agreement that is binding upon a Person or its property, in each case, other than a purchase order, service order, sales order or Money Transmitter License.

(w) “Credit Matter” means any loan or other type of credit exposure or loan-like instrument.

(x) “Cryptocurrency” means a digital or crypto currency, asset, token or coin in which transactions are verified and records are maintained by a decentralized system using cryptography, rather than by a centralized authority.

(y) “Deposited Coins” means, with respect to each User as of the Petition Date, the total number of Coins of each type owed to such User with respect to such User’s deposits on the Voyager Platform as of the Petition Date, as set forth on the Seller Statement.

(z) “Deposited Coins Value” means, with respect to any Deposited Coin of any type, the VWAP of such Coin determined as of the Petition Date.

(aa) “Disclosure Statement” means the disclosure statement for the Plan approved by the Bankruptcy Court pursuant to the Plan Solicitation Order (including all exhibits and schedules thereto).

(bb) “Documents” means all of Seller’s written files, documents, instruments, papers, books, reports, records, accounts, accounting records, financial statements, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies, and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form.

(cc) “Encumbrance” means any lien (as defined in section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in section 101(5) of the Bankruptcy Code), charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, servitudes, restrictive covenants, rights of way, rights of use or possession, rights of first offer or first refusal, third party interest, encroachments, Orders, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use.

(dd) “Environmental Laws” means all applicable Laws concerning pollution or protection of the environment.

(ee) “Equipment” means any and all equipment, computers, furniture, furnishings, fixtures, office supplies, vehicles and all other fixed assets.

(ff) “ERISA” means the Employee Retirement Income Security Act of 1974.

(gg) “ETH Coins” means Ether Coins, being the native Cryptocurrency of the Ethereum Network (symbol: ETH).

(hh) “Existing User” means as of a particular date any User for which Seller has provided on or prior to such date all data and information reasonably necessary for Purchaser to



validate that such User or any Affiliate of such User has a Cryptocurrency account on the Binance.US Platform.

(ii) “Exchange Act” means the Exchange Act of 1934 and the rules and regulations promulgated thereunder.

(jj) “Final Order” means a judgment or Order of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the clerk of the Bankruptcy Court (or such other court) on the docket in the Bankruptcy Case (or the docket of such other court), which has not been modified, amended, reversed, vacated or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending; or (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument, or rehearing shall have expired; provided that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under rules 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code has been or may be filed with respect to such order or judgment.

(kk) “Fraud” means an act committed by (a) Seller, in the making to Purchaser of the Express Seller Representations and (b) Purchaser, in the making to Seller of the Express Purchaser Representations, in any such case, with intent to (x) deceive the other Party or (y) induce such other party hereto to enter into this Agreement and requires (i) a false representation or warranty of material fact made in such representation; (ii) with knowledge that such representation or warranty is false; (iii) with an intention to induce the party to whom such representation or warranty is made to act or refrain from acting in reliance upon it; (iv) causing that party, in justifiable reliance upon such false representation or warranty, to take or refrain from taking action; and (v) causing such party to suffer damage by reason of such reliance, which together constitutes common law fraud under Delaware Law (and does not include any fraud claim based on constructive knowledge, negligent misrepresentation, recklessness or a similar theory).

(ll) “GDPR” means the EU General Data Protection Regulation (and any European Union member states’ laws and regulations implementing it), and the EU General Data Protection Regulation as it forms part of the United Kingdom (“UK”) law by virtue of section 3 of the European Union (Withdrawal) Act 2018 and any applicable implementing or supplementary legislation of the UK (including the UK Data Protection Act 2018).

(mm) “Governmental Authorization” means any permit, license, certificate, approval, consent, permission, clearance, designation, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law.

(nn) “Governmental Body” means any government, quasi-governmental entity, or other governmental or regulatory body, commission, agency or political subdivision thereof of any nature, whether foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

(oo) “Hazardous Substance” means any toxic or hazardous material, substance or waste regulated under any Environmental Laws.

(pp) “Higher and Better Offer” means a bona fide, written Acquisition Proposal that did not result from Seller’s breach of Section 5.1(a) for an Alternative Transaction on terms that the board of directors (or comparable governing body) of Seller determines in good faith, after consultation with its financial advisor and outside legal counsel, (i) constitutes a higher and otherwise better offer for the Debtors’ assets and (ii) is reasonably likely to be consummated in accordance with its terms.

(qq) “IFRS” means the International Financial Reporting Standards.

(rr) “Intellectual Property” means all intellectual property rights in any jurisdiction throughout the world, including all: (i) patents and patent applications and patent disclosures (including any provisional applications, patents of addition, continuations, continuations-in-part, substitutions, additions, divisionals, confirmations, re-examinations, reissues, revisions and extensions); (ii) trademarks, service marks, trade dress, logos, brand names, corporate names, social media handles, Internet domain names and other indicia of origin, together with all goodwill associated with each of the foregoing; (iii) copyrights and mask works, whether or not registered; (iv) registrations and applications for any of the foregoing; (v) trade secrets; (vi) Software; (vii) drawings, schematics and other technical plans; (viii) rights in data, data collections and databases; (ix) all other intellectual property; and (x) all legal rights arising from items (i) through (ix), including the right to prosecute, enforce and perfect such interests and rights to sue, oppose, cancel, interfere, enjoin and collect damages based upon such interests.

(ss) “IT Systems” means all of the computer systems, servers, hardware, firmware, middleware, networks, workstations, routers, hubs, switches, circuits, servers, data communications lines and all other information technology equipment, and all associated documentation, in each case, only as necessary to use or operate the Voyager Platform.

(tt) “Knowledge of Seller” means the actual knowledge without independent verification (and which in no event encompasses constructive, imputed or similar concepts of knowledge) of Stephen Ehrlich, Gerard Hanashe, and Rakesh Gidwani, none of whom, for the sake of clarity and avoidance of doubt, shall have any personal liability or obligations regarding such knowledge.

(uu) “Knowledge of Purchaser” means the actual knowledge without independent verification (and which in no event encompasses constructive, imputed or similar concepts of knowledge) of Brian Shroder, Krishna Juvvadi and Abhishek Baid, none of whom, for the sake of clarity and avoidance of doubt, shall have any personal liability or obligations regarding such knowledge.

(vv) “KYC Procedures” means the “know your customer” and “Customer Identification Program” policies, procedures and processes of Purchaser and its Affiliates as in effect from time to time and any equivalent procedures required under, or to comply with, applicable Law, in each case, including with respect to FCPA and any other applicable U.S. or foreign Law concerning anti-corruption, anti-bribery or anti-money laundering and consistent with the same applicable to other customers and users of Binance.US Platform.

(ww) “Law” means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, determination, decision, opinion or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

(xx) “Liability” means, as to any Person, any debt, adverse claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, or premium of any kind or nature whatsoever, whether known or unknown, perfected or unperfected, determined or determinable, disputed or undisputed, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed, at law or in equity or otherwise, including any claims or liability based on successor liability theories or otherwise under any theory of Law or equity, and including all costs and expenses related thereto.

(yy) “Loan” means any loan made by Seller in the form of Cryptocurrency to counterparties in the cryptocurrency sector; provided that, the 3AC Loan shall not be deemed a Loan.

(zz) “Loan Documents” means all agreements and documents relating to Loans and the 3AC Loan, including security agreements, pledge or collateral agreements, loan agreements, loan policies and manuals.

(aaa) “Material Adverse Effect” means any matter, event, change, development, occurrence, circumstance, condition, occurrence or effect (each, an “Effect”) that, individually or in the aggregate with all other Effects, (x) has had or would reasonably be expected to have a material adverse effect on the Acquired Assets and Assumed Liabilities, taken as whole or (y) has had or would reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement or any of the Seller Documents or to consummate the Transactions; provided that with respect to clause (x) none of the following shall constitute, or be taken into account in determining whether or not there has been, a Material Adverse Effect: (i) Effects in, arising from or relating to general business or economic conditions affecting the industry in which Seller and its Affiliates operate; (ii) Effects in, arising from or relating to national or international political or social conditions, including tariffs, riots, protests, the engagement by the United States or other country in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber or terrorist (whether or not state-sponsored) attack upon the United States or any

other country, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, Equipment or personnel of the United States or of any other country; (iii) Effects in, arising from or relating to any fire, flood, hurricane, earthquake, tornado, windstorm, other calamity or act of God, global or national health concern, epidemic, pandemic (whether or not declared as such by any Governmental Body), viral outbreak (including “Coronavirus” or “COVID-19” or the worsening thereof) or any quarantine or trade restrictions related thereto or any other *force majeure*; (iv) Effects in, arising from or relating to financial, banking, securities or Cryptocurrency markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline or rise in the price of any security, commodity, Contract, Cryptocurrency or index and (D) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the Transactions); (v) Effects in, arising from or relating to changes in, IFRS or the interpretation thereof; (vi) Effects in, arising from or relating to changes in, Laws or other binding directives or determinations issued or made by or agreements with or consents of any Governmental Body; (vii) Effects in, arising from or relating to (A) the taking of any action contemplated by this Agreement or at the written request of Purchaser or its Affiliates, (B) the failure to take any action if such action is expressly prohibited by this Agreement, (C) Purchaser’s failure to consent to any of the actions restricted in Section 6.1, (D) the negotiation, announcement or pendency of this Agreement or the Transactions, the identity, nature or ownership of Purchaser or Purchaser’s plans with respect to the Acquired Assets and Assumed Liabilities, including the impact thereof on the relationships, contractual or otherwise, of the business of Seller with employees, customers, lessors, suppliers, vendors or other commercial partners or litigation arising from or relating to this Agreement or the Transactions; (viii) any failure, in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or Advisors) (but, for the avoidance of doubt, not the underlying causes of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect); (ix) the Effect of any action taken by Purchaser or its Affiliates with respect to the Transactions or any breach by Purchaser of this Agreement or the matters set forth on Schedule 11.1(aaa); or (x)(A) the commencement or pendency of the Bankruptcy Case, (B) any objections in the Bankruptcy Court to (1) this Agreement or any of the Transactions or thereby, (2) the Agreement Order, the Confirmation Order, the Plan, or the reorganization of Seller, (3) the Bidding Procedures Order or (4) the assumption or rejection of any Assigned Contract, or (C) any Order of the Bankruptcy Court or any actions or omissions of Seller in compliance therewith; except in the case of clauses (i), (ii), (iii), (iv), (v) and (vi), to the extent such Effects have a materially disproportionate impact on the Acquired Assets and Assumed Liabilities, taken as a whole, as compared to other participants engaged in the business in which Seller operates.

(bbb) “Moelis” means Moelis & Company LLC, a Delaware limited liability company.

(ccc) “Money Transmitter License” means any consent, license, certificate, franchise, permission, variance, clearance, registration, qualification, authorization, waiver, exemption or other permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body pursuant to state money transmission or similar Laws.

(ddd) “Money Transmitter Requirements” shall mean any and all Law or Contract with a Governmental Body relating or pertaining to the business of transmitting or remitting money, monetary value or virtual currency, electronic funds transfers, remittances, issuing or selling stored value, prepaid access or the like, issuing or selling payment instruments, the custody, transfer or exchange of money, monetary value or virtual currency, or any similar payment or money services, including those related to money, monetary value, or Cryptocurrency.

(eee) “Net Owed Coins” means, with respect to each User and each type of such User’s Post-Rebalancing Coins, a number of Coins of such type equal to the total number of such User’s Post-Rebalancing Coins of such type. For the avoidance of doubt, except as the context may otherwise require, references to Net Owed Coins in this Agreement relating to payments to any User or credits thereof to any User shall be deemed to be the sum of all Net Owed Coins with respect to each type of Post-Rebalancing Coin of such User. Notwithstanding the foregoing, in the event that there is a Rebalancing Exercise Delta for any type of Coin, then (i) Purchaser shall convert any excess Acquired Coins of any type into USDC or United States Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform, and (ii) Purchaser shall distribute the amounts resulting from such conversions to User accounts with respect to Net Owed Coins where the aggregate number of Net Owed Coins exceeds the number of Acquired Coins, pro rata based on the then-prevailing prices (including applicable fees, spreads, costs and expenses) for all such Net Owed Coins on the Binance.US Platform owed to any such User.

(fff) “Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body, whether preliminary, interim, temporary or final, including any order entered by the Bankruptcy Court in the Bankruptcy Case (including the Confirmation Order) or any other court.

(ggg) “Ordinary Course” means the ordinary and usual course of operations of the business of Seller consistent with past practice and taking into account the contemplation, commencement and pendency of the Bankruptcy Case.

(hhh) “Permitted Encumbrances” means (i) Encumbrances for utilities and Taxes not yet due and payable, being contested in good faith, or the nonpayment of which is permitted or required by the Bankruptcy Code, (ii) customary easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments against any of the Acquired Assets which do not, individually or in the aggregate, adversely affect the use, ownership or operation of the Acquired Assets, (iii) materialmans’, mechanics’, artisans’, shippers’, warehousemans’ or other similar common law or statutory liens incurred in the Ordinary Course for amounts not yet due and payable, being contested in good faith, (iv) licenses granted on a non-exclusive basis, (v) such other Encumbrances or title exceptions which do not, individually or in the aggregate, materially affect the operation, value or condition of the Acquired Assets, (vi) any Encumbrances set forth on Schedule 11.1(hhh), or (viii) any Encumbrances that will be removed or released by operation of the Confirmation Order or the Plan.

(iii) “Permitted Post-Closing Lien” means, with respect to the Acquired Assets (a) Encumbrances described in clause (ii) in the definition of “Permitted Encumbrances” and any non-monetary encumbrances not in fact released upon Closing pursuant to Confirmation Order or



Plan, as applicable; provided that with respect to all Encumbrances that are “Permitted Post-Closing Liens” pursuant to this clause (a), such Encumbrances do not materially detract from the use or value of the applicable property as it is currently being used, and (b) other Permitted Encumbrances described in clauses (i), (iii), (iv) and (v) in the definition of “Permitted Encumbrances” securing monetary obligations which, individually or in the aggregate with all other Permitted Encumbrances treated as Permitted Post-Closing Liens pursuant to this clause (b), do not exceed \$10,000.

(jjj) “Person” means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, labor union, organization, estate, Governmental Body or other entity or group.

(kkk) “Personal Information” means information, in any form, that identifies, relates to, describes, could be used to locate or contact, is capable of being associated with, or could be linked, directly or indirectly, to, a natural Person, device or household, or is otherwise considered “personally identifiable information,” “personal information,” “personal data,” “nonpublic personal information,” or any similar term by any applicable Laws or Privacy Law.

(lll) “Plan” means a plan of reorganization prepared by Seller and solely to the extent related to this Agreement (but not with respect to the matters contemplated by Section 6.11(c)) and the Transactions, approved by Purchaser in its reasonable discretion, and attached as an Exhibit to this Agreement by amendment hereto as promptly as practicable, implementing the Transactions.

(mmm) “Plan Solicitation Motion” means Seller’s motion for an Order (which solely with respect to matters relating to this Agreement and the Transactions, shall be in form and substance reasonably acceptable to Purchaser), (i) approving the Disclosure Statement (including approving the Disclosure Statement as containing “adequate information” (as that term is used by section 1125 of the Bankruptcy Code)), (ii) establishing a voting record date for the Plan, (iii) approving solicitation packages and procedures for the distribution thereof, (iv) approving the forms of ballots, (v) establishing procedures for voting on the Plan, (vi) establishing notice and objection procedures for the confirmation of the Plan and (vii) establishing procedures for the assumption or assignment of executory contracts and unexpired leases under the Plan.

(nnn) “Plan Solicitation Order” means an Order entered by the Bankruptcy Court, substantially in the form attached to the Plan Solicitation Motion, which Order shall, among other things, (A) be in form and substance reasonably acceptable to Purchaser (solely with respect to matters relating to this Agreement and the Transaction), and (B) approve the relief sought in the Plan Solicitation Motion, including approving of (i) the Disclosure Statement on a conditional basis and (ii) the procedures for solicitation of votes to accept or reject the Plan.

(ooo) “Plan Supplement” has the meaning set forth in the Plan.

(ppp) “Post-Petition Coins” means Coins that were deposited with the Debtors following the Petition Date.

(qqq) “Post-Rebalancing Coins” means, with respect to each User as of the Rebalancing Date and each type of such User’s Deposited Coins, (i) the total number of such



User's Deposited Coins of such type, multiplied by (ii) the Rebalancing Ratio, as set forth on the Seller Statement.

(rrr) "Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

(sss) "Privacy Laws" means all applicable Laws and legally binding self-regulatory guidelines or standards, in each case as amended, consolidated, re-enacted or replaced from time to time, relating to the privacy, security, or Processing of Personal Information, data breach notification, website and mobile application privacy policies and practices, Processing and security of payment card information, and email, text message, or telephone communications, including (to the extent applicable to the business of Seller): the Federal Trade Commission Act; the Gramm-Leach-Bliley Act; the Telephone Consumer Protection Act; the Telemarketing and Consumer Fraud and Abuse Prevention Act; the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; the California Consumer Privacy Act; the Computer Fraud and Abuse Act; the Payment Card Industry Data Security Standards; the GDPR; and the EU e-Privacy Directive 2002/58/EC as amended by Directive 2009/136/EC (and any European Union member states' laws and regulations implementing it).

(ttt) "Process", "Processed" or "Processing" means any operation or set of operations which is performed on Personal Information, such as the use, collection, processing, storage, recording, organization, adaption, alteration, transfer, retrieval, consultation, disclosure, dissemination or combination of such Personal Information, or is otherwise considering "processing" by any applicable Privacy Laws.

(uuu) "Purchaser Development" means any of the following, first occurring after the date hereof and prior to the Closing: (i) the filing of a criminal complaint against, or indictment of, Purchaser or any of its executive officers or "C-suite" officers (including any chief risk officer or chief compliance officer) by the United States Department of Justice, (ii) the filing of a criminal complaint against, or indictment of, any of Purchaser's Affiliates or any of their executive officers or "C-suite" officers (including any chief risk officer or chief compliance officer) by the United States Department of Justice or (iii) the commencement of any criminal or regulatory (including at the appellate level) suit, litigation, legal proceeding or prosecution by the United States Department of Justice against any of the Persons described in clauses (i) and (ii), (A) in each case of clauses (i), (ii) and (iii) that relate to the operation of the Binance.US platform and wallet custody business of Purchaser and its Subsidiaries or the business of such Affiliate or the ability of such Affiliate to provide Purchaser and its Subsidiaries with the licensed software and support services necessary to operate the Binance.US Platform; and (B) in each case of clauses (ii) and (iii), that, individually or in the aggregate, would reasonably be expected to (1) prevent or materially impair or materially delay the ability of Purchaser to consummate the Transactions in accordance herewith or (2) materially and adversely affect the Users, Eligible Creditors or the Acquired Coins, in each case in a manner that would prevent Purchaser from performing its obligations under Section 6.12 or otherwise following the Closing.

(vvv) "Purchaser Group" means Purchaser, any former, current or future Affiliate of Purchaser and each of their respective former, current or future Affiliates, officers, directors, employees, partners, members, managers, agents, Advisors, successors or permitted assigns.

(www) “Rebalancing Exercise Delta” means, with respect to any Acquired Coin, the percentage by which the number of Acquired Coins is higher or lower than the number of Acquired Coins which would be required to cause the number of Acquired Coins to be in full compliance with the Rebalancing Ratio.

(xxx) “Rebalancing Ratio” means, with respect to any type of Acquired Coin, a fraction, expressed as a percentage, (i) the numerator of which is the Total Acquired Coins Value, and (ii) the denominator of which is the Total Deposited Coins Value; provided that in no event will the Rebalancing Ratio be greater than 100% and for the avoidance of doubt, the Rebalancing Ratio shall be calculated following the completion of the Rebalancing Exercise and after taking into account gas or other transaction fees incurred and paid by Seller in connection with transferring Coins to Purchaser in accordance with Section 2.4(b).

(yyy) “Retained Avoidance Action” means any preference or avoidance claim, right or cause of action under Chapter 5 of the Bankruptcy Code or any analogous state law claim against (i) Three Arrows Capital, Ltd. or any of its Affiliates, (ii) any insider as defined in the Bankruptcy Code, (iii) any other such claim, right or cause of action that Purchaser agrees in writing prior to the Closing may be retained by the Debtors, (iv) any person for an actual fraudulent transfer, and (v) West Realm Shires Inc., Alameda Ventures Ltd., or any of their Affiliates.

(zzz) “Sanctioned Person” means any Person that is the target of Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by the OFAC or the U.S. Department of State, the United Nations Security Council, the European Union, any Member State of the European Union, or the United Kingdom (irrespective of its status vis-à-vis the European Union); (b) any Person operating, organized, or resident in a country or territory that is itself the target of comprehensive Sanctions (as of the date of this Agreement, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People’s Republic, and the so-called Luhansk People’s Republic) (“Sanctioned Country”); (c) the government of a Sanctioned Country or the Government of Venezuela; or (d) any Person 50% or more owned or controlled by any such Person or Persons or acting for or on behalf of such Person or Persons.

(aaaa) “Securities Act” means the Securities Act of 1933 and the rules and regulations promulgated thereunder.

(bbbb) “Security Incident” means any actual or suspected unauthorized access to, or acquisition, modification, use, destruction, loss or disclosure of any Personal Information maintained by or on behalf of Seller or its Affiliates.

(cccc) “Seller Expense Cap” means an amount equal to either (a) if Purchaser elects to extend the Outside Date to the Extended Outside Date pursuant to Section 8.1(c), \$15,000,000 or (b) if Purchaser does not so elect to extend the Outside Date, \$10,000,000.

(dddd) “Seller Expense Start Date” means the date that is three months following the date of this Agreement.

(eeee) “Seller Held Coins” means, without duplication, as of any date of determination, all Coins that are directly or indirectly owned or held by, or attributable to, Seller

or any of its Affiliates who are Debtors (including, for the avoidance of doubt, all Coins repaid to Seller or any of its Affiliates who are Debtors at or prior to the Closing in respect of Loans (including in respect of any principal, interest, fees, expenses and penalties thereunder and including for this purpose, the 3AC Loan), including all Coins held by or on behalf of Seller or any of its Affiliates who are Debtors in respect of User accounts on the Voyager Platform), except for any Coins constituting collateral under the 3AC Loan and except any Post-Petition Coins, which for the avoidance of doubt, shall not be included in the Rebalancing Exercise or any other Transactions.

(ffff) “Seller Intellectual Property” means all Intellectual Property owned or purported to be owned by Seller that is an Acquired Asset.

(gggg) “Seller Parties” means Seller, its former, current, or future Affiliates and the former, current or future officers, directors, employees, partners, members, equityholders, controlling or controlled Persons, managers, agents, Advisors, successors or permitted assigns of the foregoing.

(hhhh) “Seller Plan” means each (i) employee welfare benefit plan within the meaning of Section 3(1) of ERISA (whether or not subject to ERISA), (ii) employee pension benefit plan within the meaning of Section 3(2) of ERISA (whether or not subject to ERISA), (iii) stock option, stock purchase, stock appreciation right or other equity or equity-based agreement, program or plan, (iv) employment, individual consulting, severance or retention agreement or (v) bonus, incentive, deferred compensation, profit-sharing, retirement, post-termination health or welfare, vacation, severance or termination pay, fringe or any other compensation or benefit plan, program, policy, Contract, agreement or other arrangement, in each case that is sponsored, maintained or contributed to by Seller or Holdings or to which Seller or Holdings is obligated to contribute or with respect to which Seller or Holdings has any Liability.

(iiii) “Software” means any and all computer programs and other software in any form or format, including firmware, middleware, software implementations of algorithms, models and methodologies, whether in source code, object code or other form, including libraries, frameworks, software development kits (SDKs), application programming interfaces (APIs), subroutines, toolsets, procedures, and other components thereof.

(jjjj) “Straddle Period” means any taxable period that includes but does not end on the Closing Date.

(kkkk) “Subsidiary” or “Subsidiaries” means, with respect to any Person, any corporation of which a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof or any partnership, association or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof.

(llll) “Subject Transaction” means (a) a transaction or series of transactions with respect to the Rebalancing Exercise that involves a series of transactions or other actions that are (or are to be) executed with a Person or group of coordinated Persons that are intended to effectuate the Rebalancing Exercise or (b) the planning or negotiation of such transaction or series of transactions, or consulting with respect thereto and, for the avoidance of doubt, does not include individual trades of Coins by Seller that are not intended to effectuate the Rebalancing Exercise or that are components of Subject Transactions that are the subject of a Transaction Notice or any such transactions with respect to Coins that do not trade on the Binance.US Platform as of the date of the proposed Subject Transaction.

(mmmm) “Tax” or “Taxes” means any federal, state, local, foreign or other taxes, charges, fees or other assessments, including income, gross receipts, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, escheat and unclaimed property, ad valorem, personal property, stamp, excise, occupation, sales, use, transfer, value added, import, export, alternative or add-on minimum or estimated tax, charge or assessment of any kind in the nature of (or similar to) taxes, including any interest, penalty or addition thereto, whether disputed or not.

(nnnn) “Tax Return” means any return, claim for refund, report, statement or information return relating to Taxes filed or required to be filed with a Governmental Body, including any schedule or attachment thereto, and including any amendments thereof.

(oooo) “Total Acquired Coins Value” means the aggregate Acquired Coins Value with respect to all Acquired Coins of each type (excluding Withheld Coins).

(pppp) “Total Deposited Coins Value” means the aggregate Deposited Coins Value with respect to all Deposited Coins of each type.

(qqqq) “Transactions” means the transactions contemplated by this Agreement or the Plan, as applicable.

(rrrr) “Unsupported Coin” means any Coin, for which Purchaser or its Affiliates does not provide trading services on the Binance.US Platform.

(ssss) “User” means any Person located and having a home address in the United States that had a Cryptocurrency account on the Voyager Platform as of the Petition Date; provided that, if a Person has multiple Cryptocurrency accounts on the Voyager Platform, such Person shall constitute a single User and all accounts of such User shall be aggregated for purposes of this Agreement.

(tttt) “User Migration Preparation” means, collectively, (i) the completion of the transfer of all Acquired User Data (including, for the avoidance of doubt, any “know your customer” information of the Users) and integration thereof on Purchaser’s and its Affiliates’ information technology systems and the Binance.US Platform, and (ii) the completion of the other items identified in the Integration Plan as being required for accounts to be opened for Users on the Binance.US Platform.

(uuuu) “User Asset Migration Date” means the date that is four (4) weeks following the date of completion of the User Migration Preparation; provided that the completion of the User Migration Preparation shall not occur prior to the Closing Date.

(vvvv) “VGX Token Smart Contracts” means any “smart contracts” related to the VGX token, together with any private keys related solely to such “smart contracts.”

(www) “Voyager Platform” means Seller’s proprietary Cryptocurrency savings and trading platform (including any website or desktop or mobile application with respect thereto).

(xxxx) “VWAP” means, with respect to any type of Coin and as of any date of determination, an amount equal to the volume weighted average price in U.S. dollars for such type of Coin for the consecutive 24-hour period immediately prior to 8:00 a.m. New York Time on such date of determination, as reported on <https://coinmarketcap.com>.

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11.3 Rules of Interpretation. Unless otherwise expressly provided in this Agreement, the following will apply to this Agreement, the Schedules and any other certificate, instrument, agreement or other document contemplated hereby or delivered hereunder.

(a) Accounting terms which are used but not otherwise defined in this Agreement have the respective meanings given to them under IFRS as in effect on the date hereof or for the period with respect to which such principles are applied, consistently applied. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under IFRS, the definition set forth in this Agreement will control.

(b) The terms “hereof,” “herein” and “hereunder” and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement. Section, clause, schedule and exhibit references contained in this Agreement are references to sections, clauses, schedules and exhibits in or to this Agreement, unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(c) Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” Where the context permits, the use of the term “or” will be equivalent to the use of the term “and/or.”

(d) The words “to the extent” shall mean “the degree by which” and not “if.”

(e) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day of such period is a day other than a Business Day, the period in question will end on the next succeeding Business Day.

(f) Words denoting any gender will include all genders, including the neutral gender. Where a word is defined herein, references to the singular will include references to the plural and vice versa.

(g) The word “will” will be construed to have the same meaning and effect as the word “shall”. The words “shall,” “will,” or “agree(s)” are mandatory, and “may” is permissive.

(h) All references to “\$” and dollars will be deemed to refer to United States currency unless otherwise specifically provided.

(i) All references to a day or days will be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided.

(j) Any document or item will be deemed “delivered,” “provided” or “made available” by Seller, within the meaning of this Agreement, if such document or item is included in the Dataroom at least one (1) Business Day prior to the date hereof.

(k) Any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived.

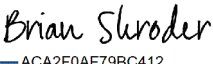
(l) Any reference to any particular Code section or any Law will be interpreted to include any amendment to, revision of or successor to that section or Law regardless of how it is numbered or classified; provided that, for the purposes of the representations and warranties set forth herein, with respect to any violation of or non-compliance with, or alleged violation of or non-compliance, with any Code section or Law, the reference to such Code section or Law means such Code section or Law as in effect at the time of such violation or non-compliance or alleged violation or non-compliance.

(m) A reference to any party to this Agreement or any other agreement or document shall include such party's successors and permitted assigns.

*(Signature pages follow.)*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**BAM TRADING SERVICES INC. D/B/A  
BINANCE.US**

DocuSigned by:  
By:  \_\_\_\_\_  
ACA2F0AF79BC412...  
Name: Brian Shroder  
Title: Chief Executive Officer

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**VOYAGER DIGITAL, LLC**

DocuSigned by:  
By:   
3724C7F0863B426...  
Name: Stephen Ehrlich  
Title: Chief Executive Officer

**EXHIBIT A**

**FORM OF BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT**

(See attached.)

## **BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT**

This BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Agreement”) is made and entered into as of [●], by and between BAM Trading Services Inc. d/b/a Binance.us, a Delaware corporation (“Purchaser”) and Voyager Digital, LLC, a Delaware limited liability company (“Seller”).

WHEREAS, Seller and Purchaser have entered into that certain Asset Purchase Agreement, dated as of December 18, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the “Purchase Agreement”), providing for, among other things, the sale and assignment by Seller to Purchaser of the Acquired Assets and the assumption by Purchaser of the Assumed Liabilities;

WHEREAS, Seller desires to sell, transfer, assign, convey and deliver to Purchaser, and Purchaser shall purchase, acquire and accept from Seller, all of Seller’s right, title and interest in and to, as of the Closing, the Acquired Assets, pursuant to the terms of, and in consummation of the transactions contemplated by, the Purchase Agreement;

WHEREAS, the execution and delivery of this Agreement is required by Sections 2.4(a) and 2.5(b) of the Purchase Agreement; and

WHEREAS, this Agreement, as duly executed by Seller and Purchaser, is being delivered as of the date hereof by each party hereto to the other party effective as of the Closing.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and intending to be legally bound hereby, Seller and the Purchaser hereby agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the respective meanings given to such terms in the Purchase Agreement.

2. Transfer of Acquired Assets. Subject to the terms and conditions of the Purchase Agreement and the Agreement Order, the Plan and the Confirmation Order, Seller does hereby sell, transfer, assign, convey and deliver to Purchaser, and Purchaser does hereby purchase, acquire and accept from Seller, all of Seller’s right, title and interest in and to, as of the Closing, the Acquired Assets, free and clear of all Encumbrances (other than Permitted Encumbrances).

3. Assignment and Assumption. Subject to the terms and conditions of the Purchase Agreement and the Agreement Order, the Plan and the Confirmation Order, Purchaser does hereby irrevocably assume from Seller, and Seller shall irrevocably transfer, assign, convey, and deliver to Purchaser, and Purchaser does hereby take assignment of, all of Seller’s right, title and interest in and to, as of the Closing, the Assigned Contracts free and clear of all Encumbrances (other than Permitted Encumbrances). Subject to the terms and conditions of the Purchase Agreement and the Agreement Order, the Plan and the Confirmation Order, Purchaser does hereby assume the Assumed Liabilities.

4. Excluded Assets. Notwithstanding anything to the contrary in this Agreement or in the Purchase Agreement, Seller shall not and does not hereby sell, transfer, assign, convey or



deliver to Purchaser, and Seller shall retain all right, title and interest to, and Purchaser shall not and does not hereby purchase, acquire or accept, or take assignment of, any of the Excluded Assets.

5. Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement or in the Purchase Agreement, Purchaser shall not assume, be deemed to have assumed or be obligated to pay, perform or otherwise discharge or otherwise be liable in respect of or be responsible for, and hereby disclaims, any of the Excluded Liabilities.

6. Terms of the Purchase Agreement. This Agreement is executed and delivered pursuant to the Purchase Agreement. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail in all respects to the extent of such conflict. Notwithstanding anything to the contrary in this Agreement, nothing herein is intended to, nor shall this Agreement be construed to, extend, amplify, modify, limit or otherwise alter in any way the terms and conditions of the Purchase Agreement (including, without limitation, any representation, warranty, covenant or obligation contained in the Purchase Agreement).

7. Governing Law. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Action that may be based upon, arising out of or related to this Agreement or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

8. Successors and Assigns. This Agreement shall be binding upon Purchaser and, subject to the terms of the Bidding Procedures Order (with respect to the matters covered thereby) and the entry and terms of the Agreement Order, the Plan and the Confirmation Order, Seller, and shall inure to the benefit of and be so binding on the parties hereto and their respective successors and permitted assigns under the Purchase Agreement.

9. Counterparts. For the convenience of the parties hereto, this Agreement may be executed and delivered (by facsimile or PDF signature) in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

10. Additional Provisions. The provisions contained in Sections 6.8 (*Further Assurances*), 10.5 (*Amendment and Waiver*), 10.6 (*Third Party Beneficiaries*), 10.8 (*Severability*), 10.9 (*Construction*), 10.13 (*Jurisdiction and Exclusive Venue*) and 10.14(b) (*Waiver of Jury Trial*) of the Purchase Agreement are hereby incorporated by reference into this Agreement, *mutatis mutandis*, and made a part of this Agreement as if set forth fully herein.

[The remainder of this page is intentionally left blank.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**SELLER:**

**VOYAGER DIGITAL, LLC**

\_\_\_\_\_  
Name:

Title:

**PURCHASER:**

**BAM TRADING SERVICES INC. D/B/A  
BINANCE.US**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT B**

**FORM OF TRADEMARK AND DOMAIN NAME ASSIGNMENT AGREEMENT**

(See attached.)

## TRADEMARK AND DOMAIN NAME ASSIGNMENT

This TRADEMARK AND DOMAIN NAME ASSIGNMENT (this “Assignment”), effective as of [●] (the “Effective Date”), is made by Voyager Digital, LLC, a Delaware limited liability company (“Voyager Digital”) and Voyager IP, LLC (f/k/a CryptoTrading IP LLC), a Delaware limited liability company (“Voyager IP,” each of Voyager Digital and Voyager IP individually, an “Assignor,” and together, the “Assignors”), to BAM Trading Services Inc. d/b/a Binance.us, a Delaware corporation (“Assignee”). Assignors and Assignee are each referred to individually as a “Party” and together as the “Parties.”

**WHEREAS**, Voyager Digital and Assignee have executed an Asset Purchase Agreement, effective as of December 18, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the “Purchase Agreement”), pursuant to which Voyager Digital has agreed to sell, transfer, assign and convey and to cause Voyager IP to sell, transfer, assign and convey to Assignee, and Assignee has agreed to purchase, acquire and accept from Assignors, all of such Assignor’s right, title and interest in and to certain intellectual property assets to Assignee;

**WHEREAS**, the assets assigned pursuant to the Purchase Agreement include the intellectual property listed in Exhibit A attached hereto (the “Assigned IP”);

**WHEREAS**, Assignee is a successor to that part of Assignors' business to which the Assigned IP pertain, and that business is ongoing and existing; and

**WHEREAS**, pursuant to the Purchase Agreement, Voyager Digital has agreed to execute this Assignment and to cause Voyager IP to execute this Assignment in order to effectuate, evidence and record such Assignor’s assignment of the Assigned IP to Assignee in the United States Patent and Trademark Office and corresponding offices in other applicable jurisdictions.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

**SECTION 1. Assignment.** Assignors hereby irrevocably conveys, assigns, transfers and delivers to Assignee and its successors and assigns, free and clear of all liens, all of such Assignor’s right, title and interest in and to the Assigned IP, including all rights of priority and goodwill associated with any of the foregoing and any and all common law rights in and to any of the foregoing, all rights in and to any of the foregoing provided by applicable law of any jurisdiction, by international treaties or conventions, all rights, interests, and claims of such Assignor or any of its affiliates, all rights to collect royalties and proceeds in connection with the foregoing from and after the Effective Date, all rights to sue or otherwise recover for any past, present, or future infringement, dilution or other violations of the foregoing and all corresponding rights that, now or hereafter, may be secured throughout the world, including any deposits or prepayments with respect to any of the foregoing.

**SECTION 2. Recordation.** Assignors hereby authorize: (i) the Commissioner for Trademarks in the United States Patent and Trademark Office, and the officials of corresponding entities or agencies in any applicable jurisdictions to record this Assignment upon request by Assignee, and (ii) the registrar of the domain names identified as such in Exhibit A to effectuate the transfers to Assignee of such domain names.

**SECTION 3. Further Assurances.** From and after the Effective Date, upon Assignee's request, Assignors shall (and shall cause such Assignor's Affiliates to) cooperate with and use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary, proper or advisable on such Assignor's part under applicable law to effect and validate the assignment of the Assigned IP to Assignee.

**SECTION 4. Definitions.** Capitalized terms used but not defined in this Assignment have the meanings given to such terms in the Purchase Agreement.

**SECTION 5. Purchase Agreement.** This Assignment is executed and delivered pursuant to the Purchase Agreement. In the event of a conflict between the terms and conditions of this Assignment and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail in all respects to the extent of such conflict. Notwithstanding anything to the contrary in this Assignment, nothing herein is intended to, nor shall this Assignment be construed to, extend, amplify, modify, limit or otherwise alter in any way the terms and conditions of the Purchase Agreement (including, without limitation, any representation, warranty, covenant or obligation contained in the Purchase Agreement).

**SECTION 6. Governing Law.** Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Assignment, and any Action that may be based upon, arising out of or related to this Assignment or the negotiation, execution or performance of this Assignment or the transactions contemplated hereby will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

**SECTION 7. Counterparts and PDF.** This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Assignment or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original. At the request of either Party, the other Party hereto will re-execute original forms of this Assignment and deliver it to the other Party. No Party will raise the use of a facsimile machine, .PDF or other electronic transmission to deliver a signature or the fact that any signature or contract was transmitted or communicated through the use of facsimile machine, .PDF or other electronic transmission as a defense to the formation of a contract and each Party forever waives any such defense.

*[Signature Page Follows]*



*Final Version*

**IN WITNESS WHEREOF**, Assignors and Assignee have caused this Assignment to be executed by its duly authorized representative as of the Effective Date.

**VOYAGER DIGITAL, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**VOYAGER IP, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**BAM TRADING SERVICES INC. D/B/A  
BINANCE.US**

By: \_\_\_\_\_  
Name:  
Title:

Joshua A. Sussberg, P.C.  
 Christopher Marcus, P.C.  
 Christine A. Okike, P.C.  
 Allyson B. Smith (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
 601 Lexington Avenue  
 New York, New York 10022  
 Telephone: (212) 446-4800  
 Facsimile: (212) 446-4900

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF FILING OF THIRD AMENDED  
 JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND ITS DEBTOR  
 AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

**PLEASE TAKE NOTICE** that on July 6, 2022, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Initial Plan”) [Docket No. 17].

**PLEASE TAKE FURTHER NOTICE** that on August 12, 2022, the Debtors filed the *First Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 287].

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

**PLEASE TAKE FURTHER NOTICE** that on October 5, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 496].

**PLEASE TAKE FURTHER NOTICE** that on October 17, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 539].

**PLEASE TAKE FURTHER NOTICE** that on October 19, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 564].

**PLEASE TAKE FURTHER NOTICE** that on October 20, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 584].

**PLEASE TAKE FURTHER NOTICE** that on October 24, 2022, the Debtors filed the *Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 590] (the “Second Amended Plan”).

**PLEASE TAKE FURTHER NOTICE** that the Debtors hereby file a *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, attached hereto as **Exhibit A** (the “Third Amended Plan”).

**PLEASE TAKE FURTHER NOTICE THAT** a comparison between the Second Amended Plan and the Third Amended Plan, is attached hereto as **Exhibit B**.

**PLEASE TAKE FURTHER NOTICE** that copies of the Initial Plan, Second Amended Plan, and other pleadings filed in the above-captioned chapter 11 cases may be obtained free of charge by visiting the website of Stretto at <http://www.cases.stretto.com/Voyager>. You may also

obtain copies of any pleadings by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

*[Remainder of page intentionally left blank.]*

Dated: December 21, 2022  
New York, New York

*/s/ Joshua A. Sussberg*

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Joshua A. Sussberg, P.C.

Christopher Marcus, P.C.

Christine A. Okike, P.C.

Allyson B. Smith (admitted *pro hac vice*)

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Email: jsussberg@kirkland.com

cmarcus@kirkland.com

christine.okike@kirkland.com

allyson.smith@kirkland.com

*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Third Amended Plan**



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	
	)	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC. <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 22-10943 (MEW)
Debtors.	)	(Jointly Administered)
	)	

**THIRD AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND  
ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Joshua A. Sussberg, P.C.  
Christopher Marcus, P.C.  
Christine A. Okike, P.C.  
Allyson B. Smith (admitted *pro hac vice*)  
KIRKLAND & ELLIS LLP  
KIRKLAND & ELLIS INTERNATIONAL LLP  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

**NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE,  
COMMITMENT, OR LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY  
OTHER PARTY IN INTEREST, AND THIS PLAN IS SUBJECT TO APPROVAL BY THE  
BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS. THIS PLAN IS NOT AN  
OFFER WITH RESPECT TO ANY SECURITIES.**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, LTD. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

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## **INTRODUCTION**

Voyager Digital Holdings, Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (each a “Debtor” and, collectively, the “Debtors”) propose this third amended joint plan (the “Plan”) for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings set forth in Article I.A of the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, properties and operations, projections, risk factors, a summary and analysis of this Plan, and certain related matters.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **ARTICLE I.**

### **DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES**

#### **A. Defined Terms**

Capitalized terms used in this Plan have the meanings ascribed to them below.

1. “3AC” means Three Arrows Capital, Ltd and any of its Affiliates or subsidiaries.
2. “3AC Claims” means the claims or causes of action asserted or assertable by the Debtors against 3AC, whether in the 3AC Liquidation Proceeding or otherwise.
3. “3AC Liquidation Proceeding” means that certain liquidation proceeding captioned *In the Matter of Three Arrows Capital Ltd. and in the Matter of Sections 159(1) and 162(1)(a) and (b) of the Insolvency Act 2003*, Claim No. BVIHC(COM)2022/0119 before the Eastern Caribbean Supreme Court in the High Court of Justice in the British Virgin Islands and the chapter 15 foreign recognition proceeding captioned *In re Three Arrows Capital, Ltd.*, No. 22-10920 (Bankr. S.D.N.Y. Jul. 1, 2022).
4. “3AC Loan” means that loan of 15,250 Bitcoins and 350 million USDC to 3AC pursuant to that certain master loan agreement dated March 4, 2022 by and between 3AC, as borrower, and OpCo and HTC Trading, Inc., as lenders.
5. “3AC Recovery” means the recovery, if any, of the Debtors from 3AC on account of the 3AC Claims.
6. “Account” means any account at OpCo held by an Account Holder relating to Cryptocurrency, which Account is identified in the Debtors’ books and records as holding Cryptocurrency as of the Petition Date.

7. “*Account Holder*” means any Person or Entity who holds an Account with OpCo as of the Petition Date.

8. “*Account Holder Claim*” means any Claim against the Debtors that is held by an Account Holder on account of such Holder’s Account.

9. “*Acquired Assets*” has the meaning ascribed to it in the Asset Purchase Agreement.

10. “*Acquired Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

11. “*Acquired Coins Value*” has the meaning ascribed to it in the Asset Purchase Agreement.

12. “*Additional Bankruptcy Distribution*” has the meaning ascribed to it in the Asset Purchase Agreement.

13. “*Administrative Claim*” means a Claim against a Debtor for the costs and expenses of administration of the Chapter 11 Cases arising on or after the Petition Date and prior to the Effective Date pursuant to section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors’ business and (b) Allowed Professional Fee Claims.

14. “*Administrative Claims Bar Date*” means the deadline for Filing requests for payment of Administrative Claims (other than requests for payment of Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), which: (a) with respect to Administrative Claims other than Professional Fee Claims, shall be thirty days after the Effective Date; and (b) with respect to Professional Fee Claims, shall be forty-five days after the Effective Date.

15. “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code. With respect to any Person that is not a Debtor, the term “*Affiliate*” shall apply to such Person as if the Person were a Debtor.

16. “*Alameda*” means Alameda Ventures Ltd., along with its Affiliates and subsidiaries.

17. “*Alameda Claims*” means the claims or causes of action asserted or assertable by the Debtors against Alameda, whether in the FTX Bankruptcy Proceeding or otherwise.

18. “*Alameda Loan Agreement*” means that certain unsecured loan agreement, dated as of June 21, 2022, as amended, restated, amended and restated, modified, or supplemented from time to time, by and among Voyager Digital Holdings, Inc., as the borrower, Voyager, as the guarantor, and Alameda, as the lender thereto.

19. “*Alameda Loan Facility*” means that certain unsecured loan facility provided for under the Alameda Loan Agreement.

20. “*Alameda Loan Facility Claims*” means any Claim against any Debtor derived from, based upon, or arising under the Alameda Loan Agreement and any fees, costs, and expenses that are reimbursable by any Debtor pursuant to the Alameda Loan Agreement.

21. “*Alameda Recovery*” means the recovery, if any, of the Debtors from Alameda on account of the Alameda Claims.



22. “*Allowed*” means, with respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim or Interest that is evidenced by a Proof of Claim timely Filed by the Bar Date or a request for payment of Administrative Claim timely Filed by the Administrative Claims Bar Date (or for which Claim or Interest under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court a Proof of Claim or a request for payment of Administrative Claim is not or shall not be required to be Filed); (b) a Claim or Interest that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; (c) a Claim or Interest Allowed pursuant to the Plan, any stipulation approved by the Bankruptcy Court, any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or a Final Order of the Bankruptcy Court, or (d) a Claim or Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court; *provided* that, with respect to a Claim or Interest described in clauses (a) and (b) above, such Claim or Interest shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or if such an objection is so interposed, such Claim or Interest shall have been Allowed by a Final Order. Any Claim or Interest that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes. A Proof of Claim Filed after and subject to the Bar Date or a request for payment of an Administrative Claim Filed after and subject to the Administrative Claims Bar Date, as applicable, shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. “Allow” and “Allowing” shall have correlative meanings.

23. “*Asset Purchase Agreement*” means that certain asset purchase agreement dated as of December 18, 2022 by and between BAM Trading Services Inc. (d/b/a Binance.US) as Purchaser and Voyager Digital, LLC as Seller.

24. “*Assumed Liabilities*” has the meaning ascribed to it in the Asset Purchase Agreement.

25. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as now in effect or hereafter amended.

26. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Southern District of New York, or any other court having jurisdiction over the Chapter 11 Cases, including to the extent of the withdrawal of reference under section 157 of the Judicial Code, the United States District Court for the Southern District of New York.

27. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated by the United States Supreme Court under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

28. “*Bar Date*” means the applicable deadline by which Proofs of Claim must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.

29. “*Bar Date Order*” means the *Order (I) Setting Deadlines for Submitting Proofs of Claims, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof* [Docket No. 218].

30. “*Binance.US Platform*” has the meaning ascribed to it in the Asset Purchase Agreement.
31. “*Binance US*” means BAM Trading Services Inc. (d/b/a Binance.US).
32. “*Binance US Account*” means a customer account opened with the Purchaser by an Account Holder or a Holder of an Allowed OpCo General Unsecured Claim.
33. “*Business Day*” means any day, other than a Saturday, Sunday, or a “legal holiday” (as defined in Bankruptcy Rule 9006(a)).
34. “*Cash*” or “\$” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.
35. “*Causes of Action*” mean any action, Claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, Lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise. For the avoidance of doubt, “*Causes of Action*” includes: (a) any right of setoff, counterclaim, or recoupment and any claim arising from any contract or for breach of duties imposed by law or in equity; (b) any claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, violation of local, state, federal, or foreign law, or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any right to object to or otherwise contest Claims or Interests; (d) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (e) any claim or defense, including fraud, mistake, duress, usury, and any other defenses set forth in section 558 of the Bankruptcy Code.
36. “*CCO*” means Evan Psaropoulos.
37. “*CEO*” means Stephen Ehrlich.
38. “*Certificate*” means any instrument evidencing a Claim or an Interest.
39. “*Chapter 11 Cases*” means (a) when used with reference to a particular Debtor, the case pending for that Debtor in the Bankruptcy Court under chapter 11 of the Bankruptcy Code and (b) when used with reference to all Debtors, the procedurally consolidated cases filed for the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.
40. “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.
41. “*Claims Objection Bar Date*” means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) (i) with respect to Administrative Claims (other than Professional Fee Claims and Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), sixty days after the Administrative Claims Bar Date or (ii) with respect to all other Claims (other than Professional Fee Claims), 180 days after the Effective Date and (b) such other period of limitation as may be specifically fixed by the Debtors or the Wind-Down Trust, as applicable, as approved by an order of the Bankruptcy Court for objecting to such Claims.
42. “*Claims Register*” means the official register of Claims against and Interests in the Debtors maintained by the Clerk of the Bankruptcy Court or the Claims, Noticing, and Solicitation Agent.

43. “*Claims, Noticing, and Solicitation Agent*” means Bankruptcy Management Solutions, Inc. d/b/a Stretto, in its capacity as the claims, noticing, and solicitation agent in the Chapter 11 Cases for the Debtors and any successors appointed by an order of the Bankruptcy Court.

44. “*Class*” means a class of Claims against or Interests in the Debtors as set forth in Article III of the Plan in accordance with section 1122(a) of the Bankruptcy Code.

45. “*Committee*” means the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases.

46. “*Confirmation*” means the Bankruptcy Court’s entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

47. “*Confirmation Date*” means the date on which Confirmation occurs.

48. “*Confirmation Hearing*” means the hearing before the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code at which the Debtors will seek Confirmation of the Plan.

49. “*Confirmation Order*” has the meaning ascribed to it in the Asset Purchase Agreement.

50. “*Consummation*” means the occurrence of the Effective Date.

51. “*Contributed Third-Party Claims*” means all direct Causes of Action that any Contributing Claimant has against any Person (other than a Debtor) that had a direct relationship with the Debtors, their predecessors, or respective affiliates and that harmed such Contributing Claimant in the claimant’s capacity as a creditor of Voyager, including (a) all Causes of Action based on, arising out of, or related to the marketing, sale, and issuance of Cryptocurrency that at any point was held or offered on Voyager’s platform; (b) all Causes of Action based on, arising out of, or related to the alleged misrepresentation of any of the Debtors’ financial information, business operations, or related internal controls; and (c) all Causes of Action based on, arising out of, or related to any alleged failure to disclose, or actual or attempted cover up or obfuscation of, any of the Debtors’ conduct prior to the Petition Date; *provided, however*, that Contributed Third-Party Claims do not include (i) any derivative claims of the Debtors; (ii) any direct claims against the Released Parties; (iii) any direct Causes of Action that any Contributing Claimant has against Mark Cuban, Dallas Basketball Limited d/b/a Dallas Mavericks, the National Basketball Association, and any of their Related Parties; or (iv) any direct Causes of Action that any Contributing Claimant, in its capacity as an equity holder of Voyager Digital Ltd., has that are asserted in the currently filed complaint, dated as of July 6, 2022, in the Ontario Superior Court of Justice by Francine De Sousa, against Voyager Digital Ltd., Stephen Ehrlich, Philip Eytan, Evan Psaropoulos, Lewis Bateman, Krisztian Toth, Jennifer Ackart, Glenn Stevens, and Brian Brooks.

52. “*Contributing Claimants*” means any Holders of Claims or Interests that elect on their ballots or opt-in forms to contribute their Contributed Third-Party Claims to the Wind-Down Entity.

53. “*Cryptocurrency*” means a digital currency or crypto asset in which transactions are verified and records maintained by a decentralized system using cryptography, rather than by a centralized authority, including stablecoins, digital coins and tokens, such as security tokens, utility tokens and governance tokens.

54. “*Cure*” or “*Cure Claim*” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s default under an Executory Contract or an Unexpired Lease assumed

by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

55. “*Customer Onboarding Protocol*” means the protocol describing the process of onboarding Account Holders and Holders of OpCo General Unsecured Claims onto the Binance.US Platform, the form of which shall be included in the Plan Supplement and filed no later than by February 3, 2023, and which shall be in a form acceptable to the Purchaser.

56. “*D&O Carriers*” means the insurance carriers of the D&O Liability Insurance Policies.

57. “*D&O Liability Insurance Policies*” means all unexpired insurance policies maintained by the Debtors, the Wind-Down Debtors, or the Estates as of the Effective Date that have been issued (or provide coverage) regarding directors’, managers’, officers’, members’, and trustees’ liability (including any “tail policy”), including but not limited to the Management Liability Policy, the Excess Policies, and the Side-A Policy, and all agreements, documents, or instruments relating thereto.

58. “*D&O Settlement*” means the settlement between the Debtors and CEO and CCO as set forth in Article IV.G of the Plan.

59. “*Debtors*” means, collectively, each of the following: Voyager Digital Holdings, Inc.; Voyager Digital Ltd.; and Voyager Digital, LLC.

60. “*Definitive Documents*” means: (a) the Plan (and any and all exhibits, annexes, and schedules thereto); (b) the Confirmation Order; (c) the Disclosure Statement and the other Solicitation Materials; (d) the Disclosure Statement Order; (e) all pleadings filed by the Debtors in connection with the Chapter 11 Cases (or related orders); (f) the Plan Supplement; (g) the Management Transition Plan; (h) any new material employment, consulting, or similar agreements entered into between the Wind-Down Trust and any of the Debtors’ employees, if any; (i) the Asset Purchase Agreement; (j) the Customer Onboarding Protocol; and (k) any and all other deeds, agreements, filings, notifications, pleadings, orders, certificates, letters, instruments or other documents reasonably desired or necessary to consummate and document the transactions contemplated by the Restructuring Transactions (including any exhibits, amendments, modifications, or supplements made from time to time thereto).

61. “*Disclosure Statement*” means the *Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, as may be amended, supplemented, or otherwise modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan.

62. “*Disclosure Statement Order*” means the order entered by the Bankruptcy Court approving the Disclosure Statement.

63. “*Disputed*” means a Claim or an Interest or any portion thereof: (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order; and (c) with respect to which a party in interest has Filed a Proof of Claim, a Proof of Interest, or otherwise made a written request to a Debtor for payment.

64. “*Disputed Claims Reserve*” means an appropriate reserve in an amount to be determined by the Wind-Down Trust for distributions on account of Disputed Claims that are subsequently Allowed after the Effective Date, in accordance with Article VII.D hereof.

65. “*Distributable Cryptocurrency*” means all Cryptocurrency held on the Voyager platform or that is otherwise property of any Debtor on the Effective Date after payment in full of, or reserve for, all Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims.

66. “*Distributable HoldCo Cash*” means HoldCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at HoldCo in full; and (y) to fund HoldCo’s Pro Rata share of the Wind-Down Reserve.

67. “*Distributable OpCo Cash*” means OpCo’s Cash, including the Purchase Price Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at OpCo in full; and (y) to fund OpCo’s Pro Rata share of the Wind-Down Reserve.

68. “*Distributable TopCo Cash*” means TopCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at TopCo in full; and (y) to fund TopCo’s Pro Rata share of the Wind-Down Reserve.

69. “*Distribution Agent*” means, as applicable, the Purchaser, Wind-Down Debtors, Wind-Down Trust or any Entity or Entities designated by the Purchaser, Wind-Down Debtors, or the Wind-Down Trust (as applicable) to make or to facilitate distributions that are to be made pursuant to the Plan, Definitive Documents, and Asset Purchase Agreement.

70. “*Distribution Date*” means, except as otherwise set forth herein, the date or dates determined by the Wind-Down Trust, on or after the Effective Date, upon which the Distribution Agent shall make distributions to Holders of Allowed Claims entitled to receive distributions under the Plan.

71. “*Distribution Record Date*” means the record date for purposes of determining which Holders of Allowed Claims and Interests against the Debtors are eligible to receive distributions under the Plan, which date shall be the Effective Date, or such other date as is determined by the Debtors or designated by an order of the Bankruptcy Court.

72. “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which (a) all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan, (b) no stay of the Confirmation Order is in effect, and (c) the Debtors declare the Plan effective.

73. “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

74. “*Estate*” means, as to each Debtor, the estate created on the Petition Date for the Debtor in its Chapter 11 Case pursuant to sections 301 and 541 of the Bankruptcy Code and all property (as defined in section 541 of the Bankruptcy Code) acquired by the Debtor after the Petition Date through and including the Effective Date.

75. “*Excess Policies*” means, collectively, the Excess Insurance Policy, No. EFI1203041-01, issued by Euclid Financial on behalf of Certain Underwriters of Lloyd’s, London, the Excess Insurance Policy, No. RILED0A3392022, issued by Relm Insurance Ltd., both for the February 22, 2022 to February 22, 2023 period, and the Excess Policy, No. ELU184180-23, issued by XL Specialty Insurance Company, for the February 22, 2022 to July 1, 2023 period.



76. “*Exculpated Parties*” means, collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) the Committee, and each of the members thereof, solely in their capacity as such; (c) each of the Released Professionals; (d) each of the Released Voyager Employees; and (e) the Distribution Agent.

77. “*Executory Contract*” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

78. “*Existing Equity Interests*” means any Interest in TopCo existing immediately prior to the occurrence of the Effective Date.

79. “*Extended Outside Date*” has the meaning set forth in the Asset Purchase Agreement.

80. “*Federal Judgment Rate*” means the federal judgment interest rate in effect as of the Petition Date calculated as set forth in section 1961 of the Judicial Code.

81. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing, respectively, in the Chapter 11 Cases with the Bankruptcy Court or its authorized designee, or, with respect to the filing of a Proof of Claim or Proof of Interest, file, filed, or filing, respectively, with the Claims, Noticing, and Solicitation Agent.

82. “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

83. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, petition for certiorari, or move for a new trial, reargument, reconsideration, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, reargument, reconsideration, or rehearing has been timely taken or filed, or as to which any appeal that has been or may be taken or any petition for certiorari or any motion for a new trial, reargument, reconsideration, or rehearing that has been or may be made or filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the motion for a new trial, reargument, reconsideration, or rehearing shall have been denied, resulted in no modification of such order (if any such motion has been or may be granted), or have otherwise been dismissed with prejudice; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure or any comparable Bankruptcy Rule may be filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

84. “*FTX*” means FTX Trading, Ltd. and any of its Affiliates or subsidiaries, including West Realm Shires Inc (d/b/a “FTX.US”).

85. “*FTX Bankruptcy Proceeding*” means that certain chapter 11 proceeding captioned *In re FTX Trading Ltd.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Nov. 11, 2022).

86. “*FTX Claims*” means the claims or causes of action asserted or assertable by the Debtors against FTX, whether in the FTX Bankruptcy Proceeding or otherwise.

87. “*FTX Recovery*” means the recovery, if any, of the Debtors from FTX on account of the FTX Claims.

88. “*General Unsecured Claim*” means, collectively, any HoldCo General Unsecured Claim, OpCo General Unsecured Claim, or TopCo General Unsecured Claim.

89. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

90. “*Government Bar Date*” means the applicable deadline by which Proofs of Claim by a Governmental Unit must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.

91. “*HoldCo*” means Voyager Digital Holdings, Inc.

92. “*HoldCo General Unsecured Claim*” means any Claim against HoldCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Alameda Loan Facility Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation, against HoldCo are HoldCo General Unsecured Claims.

93. “*Holder*” means an Entity holding a Claim against or an Interest in any Debtor.

94. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

95. “*Insurance Policies*” means any and all insurance policies entered into by the Debtors, including the D&O Insurance Policies.

96. “*Intercompany Claim*” means any Claim held by a Debtor or a Debtor’s Affiliate against a Debtor.

97. “*Intercompany Interest*” means, other than an Interest in Voyager, an Interest in one Debtor held by another Debtor or a Debtor’s Affiliate.

98. “*Interest*” means any equity security (as such term is defined in section 101(16) of the Bankruptcy Code) including all issued, unissued, authorized, or outstanding shares of capital stock and any other common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profit interests of an Entity, including all options, warrants, rights, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable, or exchangeable securities, or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in an Entity whether or not arising under or in connection with any employment agreement and whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security, and including any Claim against the Debtors subject to subordination pursuant to section 510(b) of the Bankruptcy Code arising from or related to the foregoing.

99. “*Interim Compensation Order*” means the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* [Docket No. 236].

100. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001 and the rules and regulations promulgated thereunder, as applicable to the Chapter 11 Cases.

101. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.



102. “*Liquidation Procedures*” means, in the event the Sale Transaction is not consummated by the Outside Date, such procedures filed by the Wind-Down Entity identifying the mechanics and procedures to effectuate the Liquidation Transaction.

103. “*Liquidation Transaction*” means, in the event the Sale Transaction is not consummated by the Outside Date, the distribution of the Debtors’ Cryptocurrency, Cash and other assets pursuant to Article IV.D of this Plan.

104. “*Management Liability Policy*” means the Executive and Corporate Securities Liability Insurance Policy, No. ELU181214-22, issued by XL Specialty Insurance Company for the February 22, 2022 to February 22, 2023 period.

105. “*Management Transition Plan*” has the meaning set forth in Article IV.E of the Plan, and which shall be in form and substance reasonably acceptable to the Committee.

106. “*Net Owed Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

107. “*Non-Released D&O Claims*” has the meaning set forth in Article IV.F of the Plan.

108. “*Non-Released D&O Claim Budget*” means the amount allocated to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims, which amount shall be agreed upon between the Debtors and the Committee prior to the Confirmation Hearing.

109. “*Non-Released Insurance Claims*” has the meaning set forth in Article IV.F of the Plan.

110. “*OpCo*” means Voyager Digital, LLC.

111. “*OpCo General Unsecured Claim*” means any Claim against OpCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Account Holder Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation against OpCo are OpCo General Unsecured Claims.

112. “*OSC*” means the Ontario Securities Commission.

113. “*Other Priority Claim*” means any Claim against a Debtor, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

114. “*Outside Date*” has the meaning set forth in the Asset Purchase Agreement. All references herein to the “Outside Date” shall be deemed to include the “Extended Outside Date” to the extent the Outside Date is extended in accordance with Section 8.1(c) of the Asset Purchase Agreement.

115. “*Person*” has the meaning set forth in section 101(41) of the Bankruptcy Code.

116. “*Petition Date*” means July 5, 2022.

117. “*Plan*” means this joint chapter 11 plan and all exhibits, supplements, appendices, and schedules hereto, as may be altered, amended, supplemented, or otherwise modified from time to time in

accordance with Article X.A hereof, including the Plan Supplement (as altered, amended, supplemented, or otherwise modified from time to time), which is incorporated herein by reference and made part of the Plan as if set forth herein.

118. “*Plan Supplement*” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may thereafter be amended, supplemented, or otherwise modified from time to time in accordance with the terms of the Plan, the Bankruptcy Code, the Bankruptcy Rules, and applicable law), to be Filed by the Debtors no later than seven days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court, and additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement. The Plan Supplement may include the following, as applicable: (a) the Schedule of Assumed Executory Contracts and Unexpired Leases; (b) the Schedule of Retained Causes of Action; (c) the Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases; (d) the Customer Onboarding Protocol; (e) the Restructuring Transactions Memorandum; (f) the Wind-Down Trust Agreement; and (g) any additional documents necessary to effectuate or that is contemplated by the Plan, including any compensation program for any of the Debtors’ employees to be established as contemplated in the Plan and the Definitive Documents to facilitate the transfer of Acquired Assets pursuant to the Asset Purchase Agreement and the wind-down of the Debtors’ Estates; *provided* that the Schedule of Retained Causes of Action shall be filed no later than 14 days before the Voting Deadline. The Plan Supplement (and the contents thereof) shall be (x) subject to Purchaser’s consent rights solely to the extent set forth under the Asset Purchase Agreement (and shall otherwise be consistent with the Asset Purchase Agreement) and (y) reasonably acceptable to the Committee.

119. “*Priority Tax Claim*” means any Claim of a Governmental Unit against a Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code.

120. “*Pro Rata*” means the proportion that (i) an Allowed Claim or an Allowed Interest in a particular Class bears to (ii) the aggregate amount of Allowed Claims or Allowed Interests in that Class and, solely with respect to Claims in Classes 3 and 4(a), the proportion that an Allowed Claim in either such Class bears to the aggregate amount of Allowed Claims in Classes 3 and 4(a) in the aggregate, unless otherwise indicated. For purposes of calculating Pro Rata distributions if the Sale Transaction is consummated by the Outside Date, the Pro Rata shares of all Holders of Allowed Claims or Allowed Interests shall be calculated taking into account the Acquired Coins Value of the Net Owed Coins distributed to each of the Account Holders.

121. “*Professional*” means an Entity: (a) employed in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code or (b) for which compensation and reimbursement has been Allowed by Final Order of the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

122. “*Professional Fee Claim*” means any Administrative Claim by a Professional for compensation for services rendered or reimbursement of expenses incurred by such Professional through and including the Effective Date to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court. To the extent the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional’s requested fees and expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

123. “*Professional Fee Escrow Account*” means an escrow account funded by the Debtors with Cash no later than the Effective Date in an amount equal to the Professional Fee Escrow Amount.

124. “*Professional Fee Escrow Amount*” means the aggregate amount of quarterly U.S. Trustee fees, Professional Fee Claims, and other unpaid fees and expenses the Professionals have incurred or will incur in rendering services in connection with the Chapter 11 Cases prior to and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, which shall be estimated pursuant to the method set forth in Article II.B of the Plan.

125. “*Proof of Claim*” means a written proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

126. “*Proof of Interest*” means a written proof of Interest Filed against any of the Debtors in the Chapter 11 Cases.

127. “*Purchase Price Cash*” means the Cash paid by the Purchaser to OpCo pursuant to the Asset Purchase Agreement.

128. “*Purchaser*” means Binance US.

129. “*Reinstated*” or “*Reinstatement*” means, with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

130. “*Related Party*” means, with respect to any Entity, in each case in its capacity as such with respect to such Entity, such Entity’s current and former directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and advisors.

131. “*Released Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Wind-Down Debtors; (c) the Committee, and each of the members thereof; (d) each of the Released Professionals; (e) Purchaser and each of its Related Parties; and (f) each of the Released Voyager Employees (subject to the limitations contained in Article IV.F and Article IV.G of the Plan); *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Released Parties” under the Plan.

132. “*Released Professionals*” means the following professionals retained by the Debtors, the Committee, or the Purchaser (as applicable): (i) Kirkland & Ellis LLP; (ii) Moelis & Company LLC; (iii) Berkeley Research Group, LLC; (iv) Bankruptcy Management Solutions, Inc. d/b/a Stretto; (v) Quinn Emanuel Urquhart & Sullivan LLP; (vi) Fasken Martineau DuMoulin LLP; (vii) Campbells Legal (BVI); (viii) McDermott Will & Emery LLP; (ix) FTI Consulting, Inc.; (x) Epiq Corporate Restructuring, LLC; (xi) Cassels, Brock & Blackwell LLP; (xii) Paul Hastings LLP; (xiii) Harney Westwood & Riegels LP (BVI); (xiv) Day Pitney LLP (solely in their capacity as counsel to the Debtors); (xv) Jenner & Block LLP; (xvi) Seyfarth Shaw LLP; (xvii) Alvarez & Marsal Canada Inc.; (xviii) Blake, Cassels & Graydon LLP; (xix) Jaffe Raitt Heuer & Weiss; (xx) Latham & Watkins LLP; (xxi) Lowenstein Sandler LLP; (xxii) Kramer Levin LLP; and (xxiii) Acura Law Firm; *provided* that if the Asset Purchase Agreement is terminated, Latham & Watkins LLP shall not be a “Released Professional” under the Plan.

133. “*Released Voyager Employees*” means all directors, officers, and Persons employed by each of the Debtors and their Affiliates serving in such capacity on or after the Petition Date but before the Effective Date (subject to the limitations contained in Article IV.F and Article IV.G of the Plan).

134. “*Releasing Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Wind-Down Debtors; (c) the Committee, and each of the members thereof; (d) each of the Released Professionals; (e) each of the Released Voyager Employees; (f) Purchaser and each of its Related Parties to the extent Purchaser is able to bind such Related Parties; (g) all Holders of Claims that vote to accept the Plan and affirmatively opt into the releases provided by the Plan; (h) all Holders of Claims that vote to reject the Plan and affirmatively opt into the releases provided by the Plan; and (i) all Holders of Claims or Interests that abstain from voting (or are otherwise not entitled to vote) on the Plan and affirmatively opt into the releases provided by the Plan; *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Releasing Parties” under the Plan.

135. “*Restructuring Transactions*” means those mergers, amalgamations, consolidations, reorganizations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions, or other corporate transactions that the Debtors and the Committee jointly determine to be necessary to implement the transactions described in this Plan, as described in more detail in Article IV.B herein and the Restructuring Transactions Memorandum.

136. “*Restructuring Transactions Memorandum*” means that certain memorandum as may be amended, supplemented, or otherwise modified from time to time, describing the steps to be carried out to effectuate the Restructuring Transactions, the form of which shall be included in the Plan Supplement, and which shall be in a form reasonably acceptable to the Committee.

137. “*Robertson Class Action*” means that certain putative class action litigation filed in the United States District Court for the Southern District of Florida, captioned *Robertson, et al. v. Cuban, et al.*, No. 1:22-cv-22538-RKA (S.D. Fla. Aug. 10, 2022).

138. “*Sale Transaction*” means the sale of certain of the Debtors’ assets and all other transactions pursuant to the Asset Purchase Agreement.

139. “*Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance acceptable to the Purchaser and in all respects consistent with the terms of the Asset Purchase Agreement, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors and assigned to the Purchaser pursuant to the Plan and Asset Purchase Agreement, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Trust, as applicable, in accordance with the Plan.

140. “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance reasonably acceptable to the Committee, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Trust, as applicable, in accordance with the Plan.

141. “*Schedule of Retained Causes of Action*” means the schedule of certain Causes of Action of the Debtors that are not released, waived, settled, compromised, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors and/or the Wind-Down Entity, which shall be included in the Plan Supplement. For the avoidance of doubt, any failure to specifically list any Causes of Action on the Schedule of Retained Causes of Action shall not be deemed a waiver or admission that any such Cause of Action does not constitute Vested Causes of Action.

142. “*Schedules*” means, collectively, the schedules of assets and liabilities, Schedule of Assumed Executory Contracts and Unexpired Leases, Schedule of Assumed and Assigned Executory

Contracts and Unexpired Leases, and statements of financial affairs Filed by each of the Debtors pursuant to section 521 of the Bankruptcy Code, as such schedules and statements may have been or may be amended, modified, or supplemented from time to time.

143. “SEC” means the United States Securities and Exchange Commission.

144. “*Section 510(b) Claim*” means any Claim against a Debtor subject to subordination under section 510(b) of the Bankruptcy Code.

145. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a secured Claim.

146. “*Secured Tax Claim*” means any Secured Claim against a Debtor that, absent its Secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

147. “*Securities Act*” means the U.S. Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

148. “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act.

149. “*Side-A Policy*” means the Cornerstone A-Side Management Liability Policy, ELU184179-22, issued by XL Specialty Insurance Company, for the July 1, 2022 to July 1, 2023 period.

150. “*Solicitation Materials*” means all solicitation materials with respect to the Plan.

151. “*Special Committee*” means the special committee established at OpCo, comprised of two independent directors, to conduct the Special Committee Investigation.

152. “*Special Committee Investigation*” means that certain investigation undertaken by the Special Committee into certain historical transactions, as more fully described in the Disclosure Statement.

153. “*Supported Jurisdiction*” has the meaning ascribed to it in the Asset Purchase Agreement.

154. “*TopCo*” means Voyager Digital Ltd., a Canadian corporation that is publicly traded on the Toronto Stock Exchange.

155. “*TopCo General Unsecured Claim*” means any Claim against TopCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Alameda Loan Facility Claim; (h) an Intercompany Claim; or (i) a Section 510(b) Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation, other than 510(b) Claims, against TopCo are TopCo General Unsecured Claims.



156. “*Transferred Creditors*” means Account Holders and Holders of Allowed OpCo General Unsecured Claims who have completed all documentation and “KYC” processes reasonably required by Purchaser in the ordinary course of Purchaser’s business with respect to similarly situated clients and who have opened a Binance US Account as of the date that is three (3) months following the later of the Closing Date (as defined in the Asset Purchase Agreement) or such later date as may be specified in the Customer Onboarding Protocol, and the successors and assigns of such Holders.

157. “*Transferred Cryptocurrency Value*” means the aggregate VWAP of any Cryptocurrency that is the subject of an Additional Bankruptcy Distribution as of the date that is two Business Days prior to such Additional Bankruptcy Distribution.

158. “*U.S. Trustee*” means the Office of the United States Trustee for Region 2.

159. “*Unclaimed Distribution*” means any distribution under the Plan on account of an Allowed Claim or Allowed Interest to a Holder that, after the expiration of six months after the Effective Date, has not: (a) accepted a distribution, (b) given notice to the Wind-Down Trust of an intent to accept a particular distribution, (c) responded to the Debtors’ or Wind-Down Trust’s requests for information necessary to facilitate a particular distribution, or (d) taken any other action necessary to facilitate such distribution.

160. “*Unexpired Lease*” means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or section 1123 of the Bankruptcy Code.

161. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

162. “*Unsupported Jurisdiction*” has the meaning ascribed to it in the Asset Purchase Agreement.

163. “*Unsupported Jurisdiction Approval*” has the meaning ascribed to it in the Asset Purchase Agreement.

164. “*Vested Causes of Action*” means the Causes of Action vesting in the Wind-Down Entity pursuant to Article IV.L of the Plan, including, but not limited to, those Causes of Action enumerated on the Schedule of Retained Causes of Action, which shall be included in the Plan Supplement and in all respects consistent with the terms of the Asset Purchase Agreement.

165. “*VGX*” means Voyager Token, that certain Cryptocurrency issued by the Debtors.

166. “*Voting Deadline*” means January 27, 2023.

167. “*Voyager*” means Voyager Digital Ltd. and its direct and indirect Affiliates.

168. “*VWAP*” means, with respect to any type of Cryptocurrency and as of any date of determination, an amount equal to the volume weighted average price in U.S. dollars for such type of Cryptocurrency for the consecutive 24-hour period immediately prior to 8:00 a.m. New York Time on such date of determination, as reported on <https://coinmarketcap.com>.

169. “*Wind-Down Debtor*” means a Debtor, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date.



170. “*Wind-Down Entity*” means the Wind-Down Debtor or the Wind-Down Trust, as applicable, pursuant to the Restructuring Transactions Memorandum.

171. “*Wind-Down Entity Assets*” means the Wind-Down Trust Assets or any assets transferred to the Wind-Down Debtor, as applicable.

172. “*Wind-Down Reserve*” means an amount, which shall be agreed upon between the Debtors and the Committee prior to the Confirmation Hearing.

173. “*Wind-Down Trust*” means the trust established on the Effective Date and described in Article IV.H to be established under Delaware trust law that, among other things, shall effectuate the wind-down of the Wind-Down Debtors, commence, litigate and settle the Vested Causes of Action that are not released, waived, settled, compromised, or transferred under the Plan and make distributions pursuant to the terms of the Plan and the Wind-Down Trust Agreement; *provided* that, for the avoidance of doubt, the Wind-Down Trust shall not conduct any business operations or continue the Debtors’ business operations after the Effective Date.

174. “*Wind-Down Trust Agreement*” means that certain trust agreement by and among the Debtors, the Committee, and the Wind-Down Trust, which shall be included in the Plan Supplement in a form reasonably acceptable to the Committee.

175. “*Wind-Down Trust Assets*” means all of the Debtors’ assets transferred to, and vesting in, the Wind-Down Trust pursuant to the Wind-Down Trust Agreement, which, in the event the Sale Transaction is consummated, shall exclude the Acquired Assets, and which shall include, without limitation but only to the extent the following are not Acquired Assets, (a) the Wind-Down Reserve, (b) to the extent not purchased by Purchaser pursuant to the Asset Purchase Agreement, all VGX held by the Debtors as of the Petition Date, (c) 3AC Claims and 3AC Recovery, (d) FTX Claims and FTX Recovery, (e) Alameda Claims and Alameda Recovery, (f) the Non-Released D&O Claims, and (g) the Vested Causes of Action.

176. “*Wind-Down Trust Beneficiaries*” means the Holders of Allowed Claims or Allowed Interests that are entitled to receive distributions pursuant to the terms of the Plan, whether or not such Claims or Interests are Allowed as of the Effective Date.

177. “*Wind-Down Trust Expenses*” means all actual and necessary costs and expenses incurred by the Wind-Down Trustee in connection with carrying out the obligations of the Wind-Down Trust pursuant to the terms of the Plan and the Wind-Down Trust Agreement.

178. “*Wind-Down Trust Oversight Committee*” means the oversight committee tasked with overseeing the Wind-Down Trust in accordance with the Plan and the Wind-Down Trust Agreement.

179. “*Wind-Down Trust Units*” means the beneficial interests in the Wind-Down Trust as more fully set forth in the Wind-Down Trust Agreement.

180. “*Wind-Down Trustee*” means the Person or Persons selected by the Committee, after consultation with the Debtors, subject to the approval of the Bankruptcy Court and identified in the Plan Supplement, to serve as the trustee(s) of the Wind-Down Trust, and any successor thereto, appointed pursuant to the Wind-Down Trust Agreement.

## **B. Rules of Interpretation**

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; (2) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form; (3) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (4) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed, shall mean that document, schedule, or exhibit, as it may thereafter have been or may thereafter be validly amended, amended and restated, supplemented, or otherwise modified; (5) unless otherwise specified, any reference to an Entity as a Holder of a Claim or Interest, includes that Entity's successors and assigns; (6) unless otherwise specified, all references herein to "Articles" are references to Articles hereof or hereto; (7) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (8) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to any particular portion of the Plan; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (12) references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (13) unless otherwise specified, all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases; (14) any effectuating provisions may be interpreted by the Debtors or the Wind-Down Trust in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; (15) any references herein to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter; (16) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; (17) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; and (18) the use of "include" or "including" is without limitation unless otherwise stated.

## **C. Computation of Time**

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

## **D. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan and any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, documents, instruments,

or contracts, in which case the governing law of such agreement shall control); *provided* that corporate, limited liability company, or partnership governance matters relating to the Debtors or the Wind-Down Debtors, as applicable, shall be governed by the laws of the jurisdiction of incorporation or formation of the relevant Debtor or Wind-Down Debtor, as applicable.

**E. Reference to Monetary Figures**

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

**F. Reference to the Debtors or the Wind-Down Debtors**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Wind-Down Debtors mean the Debtors and the Wind-Down Debtors, as applicable, to the extent the context requires.

**G. Nonconsolidated Plan**

Although for purposes of administrative convenience and efficiency the Plan has been filed as a joint plan for each of the Debtors and presents together Classes of Claims against and Interests in the Debtors, the Plan does not provide for the substantive consolidation of any of the Debtors.

**ARTICLE II.**

**ADMINISTRATIVE AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

**A. Administrative Claims**

Except as otherwise provided in this Article II.A and except with respect to Administrative Claims that are Professional Fee Claims or subject to 11 U.S.C. § 503(b)(1)(D), unless previously Filed, requests for payment of Allowed Administrative Claims (other than Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code) must be Filed and served on the Wind-Down Entity pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such Administrative Claims shall be deemed satisfied as of the Effective Date without the need for any objection from the Wind-Down Entity or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity. Objections to such requests, if any, must be Filed and served on the Wind-Down Entity and the requesting party by the Claims Objection Bar Date for Administrative Claims. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order of the Bankruptcy Court.

Except with respect to Administrative Claims that are Professional Fee Claims, and except to the extent that an Administrative Claim or Priority Tax Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Claim and the applicable Debtor(s) agree to less favorable treatment, each Holder of an Allowed Administrative Claim shall receive an amount of Cash equal to the

amount of the unpaid or unsatisfied portion of such Allowed Administrative Claim in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Effective Date, no later than thirty (30) days after the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Wind-Down Entity, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court. Any Cryptocurrency inadvertently deposited to the Debtors' account(s) after the Petition Date shall be returned to the sender in full.

Objections to requests for payment of such Administrative Claims, if any, must be Filed with the Bankruptcy Court and served on the Wind-Down Entity and the requesting Holder no later than the Claims Objection Bar Date for Administrative Claims. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, an order that becomes a Final Order of the Bankruptcy Court.

## **B. Professional Fee Claims**

### **1. Final Fee Applications and Payment of Professional Fee Claims**

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules. The Wind-Down Entity shall pay Professional Fee Claims in Cash to such Professionals in the amount the Bankruptcy Court allows, including from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court; *provided* that the Debtors' and the Wind-Down Entity's obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account.

### **2. Professional Fee Escrow Account**

No later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and the U.S. Trustee and for no other Entities until all quarterly U.S. Trustee fees and all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the U.S. Trustee or to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. No funds held in the Professional Fee Escrow Account shall be property of the Estates of the Debtors or the Wind-Down Entity. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, and all U.S. Trustee quarterly fees plus statutory interest, if any, have been paid in full, any remaining funds held in the Professional Fee

Escrow Account shall be turned over to the Wind-Down Entity without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

3. Professional Fee Escrow Amount

The Professionals shall deliver to the Debtors a reasonable and good-faith estimate of their unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, and shall deliver such estimate no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Fee Claims Filed with the Bankruptcy Court, and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated to be outstanding as of the anticipated Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account; *provided* that the Wind-Down Entity shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

4. Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors and/or the Wind-Down Entity, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Wind-Down Entity. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Entity may employ and pay any Professional in the ordinary course of business for the period after the Confirmation Date without any further notice to or action, order, or approval of the Bankruptcy Court.

For the avoidance of doubt, no Administrative Claims, Professional Fee Claims, or any other post-confirmation fees and expenses shall be paid prior to payment of any quarterly fees due and outstanding to the U.S. Trustee.

**C. Priority Tax Claims**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release, and in exchange for, each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

**ARTICLE III.**

**CLASSIFICATION, TREATMENT,  
AND VOTING OF CLAIMS AND INTERESTS**

**A. Classification of Claims and Interests**

Except for the Claims addressed in Article II of the Plan, all Claims against and Interests in the Debtors are classified in the Classes set forth in this Article III for all purposes, including voting,

Confirmation, and distributions pursuant to the Plan and in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

## B. Summary of Classification

A summary of the classification of Claims against and Interests in each Debtor pursuant to the Plan is set forth in the following chart. The Plan constitutes a separate chapter 11 plan for each of the Debtors, and accordingly, the classification of Claims and Interests set forth below applies separately to each of the Debtors. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes, and such Claims or Interests shall be treated as set forth in Article III.E hereof. Voting tabulations for recording acceptances or rejections of the Plan will be conducted on a Debtor-by-Debtor basis as set forth above.<sup>1</sup>

Class	Claim or Interest	Status	Voting Rights
1	Secured Tax Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3	Account Holder Claims	Impaired	Entitled to Vote
4A	OpCo General Unsecured Claims	Impaired	Entitled to Vote
4B	HoldCo General Unsecured Claims	Impaired	Entitled to Vote
4C	TopCo General Unsecured Claims	Impaired	Entitled to Vote
5	Alameda Loan Facility Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
6	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
8	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)

<sup>1</sup> The Debtors reserve the right to separately classify Claims or Interests to the extent necessary to comply with any requirements under the Bankruptcy Code or applicable law.



Class	Claim or Interest	Status	Voting Rights
9	Existing Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

### C. Treatment of Classes of Claims and Interests

Subject to Article VI hereof, each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in exchange for such Holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors or Wind-Down Entity, as applicable, and the Holder of such Allowed Claim or Allowed Interest, as applicable. In no event shall any Holder of a Claim receive more than such Holder's Allowed amount on account of such Claim.

#### 1. Class 1 — Secured Tax Claims

- (a) *Classification:* Class 1 consists of all Secured Tax Claims.
- (b) *Treatment:* Each Holder of an Allowed Secured Tax Claim shall receive, in full and final satisfaction of such Allowed Secured Tax Claim, at the option of the Wind-Down Entity, payment in full in Cash of such Holder's Allowed Secured Tax Claim or such other treatment rendering such Holder's Allowed Secured Tax Claim Unimpaired.
- (c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Allowed Secured Tax Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Secured Tax Claims are not entitled to vote to accept or reject the Plan.

#### 2. Class 2 — Other Priority Claims

- (a) *Classification:* Class 2 consists of all Other Priority Claims.
- (b) *Treatment:* Each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction of such Allowed Other Priority Claim, at the option of the applicable Debtor, payment in full in Cash of such Holder's Allowed Other Priority Claim or such other treatment rendering such Holder's Allowed Other Priority Claim Unimpaired.
- (c) *Voting:* Class 2 is Unimpaired under the Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

#### 3. Class 3 — Account Holder Claims

- (a) *Classification:* Class 3 consists of all Account Holder Claims.
- (b) *Allowance:* Account Holder Claims shall be conclusively Allowed in the amount listed on OpCos's *Amended Schedules of Assets and Liabilities* (Case No. 22-10945) [Docket No. 18]; *provided* that the rights of any Holder of an

Account Holder Claim to object to the scheduled amount shall be preserved. To the extent an Account Holder Claim is Allowed in a greater amount than the scheduled amount of such Account Holder Claim, such Holder shall be entitled to a subsequent distribution such that it will receive its Pro Rata share of recoveries to Holders of Allowed Account Holder Claims. Account Holder Claims shall be valued in U.S. dollars as of the Petition Date consistent with section 502(b) of the Bankruptcy Code.

(c) *Treatment:* Each Holder of an Allowed Account Holder Claim will receive in exchange for such Allowed Account Holder Claim:

(i) If the Sale Transaction is consummated by the Outside Date:

- A. for Account Holders in Supported Jurisdictions, its Net Owed Coins, as provided in and subject to the requirements of Section 6.12 of the Asset Purchase Agreement;
- B. for Account Holders in Unsupported Jurisdictions, value in Cash at which such Net Owed Coins allocable to such Account Holder are liquidated; *provided* that to the extent that the Purchaser obtains the Unsupported Jurisdiction Approval for the jurisdiction in which such Account Holder resides and the Debtors and/or Wind-Down Entity has not made such Cash distribution to such Account Holder, then such Account Holder shall receive the treatment in Article III.C.3(c)(i)(A);
- C. its Pro Rata share of any Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;
- D. its Pro Rata share of Distributable OpCo Cash; and
- E. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims;

*provided* that distributions made to any Account Holder pursuant to clauses (C), (D), and (E) above shall be made after taking into account the Acquired Coins Value of the Net Owed Coins or the value in Cash at which such Net Owed Coins are liquidated, as applicable, previously allocated to such Account Holder; or

(ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:

- A. its Pro Rata share of Distributable OpCo Cash;
- B. its Pro Rata share of Distributable Cryptocurrency, which such Account Holder shall be able to withdraw in kind, alternative Cryptocurrency, and/or Cash for a period of thirty (30) days after the Effective Date through the Voyager platform or, if elected by Seller pursuant to Section 6.12(d) of the Asset Purchase Agreement, through the Binance.US Platform; *provided* that if the applicable transfer is made through the Voyager platform and such Account Holder does not withdraw its Pro Rata share of Distributable Cryptocurrency available to such Account Holder from the Voyager platform within such thirty (30) day period, such Account Holder will receive Cash in the equivalent value to its Pro Rata share of Distributable Cryptocurrency; and
- C. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to OpCo; *provided* that any distributions on account of Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.

(d) *Voting:* Class 3 is Impaired under the Plan. Holders of Allowed Account Holder Claims are entitled to vote to accept or reject the Plan.

4. Class 4A — OpCo General Unsecured Claims

- (a) *Classification:* Class 4A consists of all OpCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed OpCo General Unsecured Claim will receive in exchange for such Allowed OpCo General Unsecured Claim:
  - (i) If the Sale Transaction is consummated by the Outside Date:
    - A. its Pro Rata share of Distributable Cryptocurrency in Cash;
    - B. its Pro Rata share of Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;
    - C. its Pro Rata share of Distributable OpCo Cash; and
    - D. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-

Down Trust Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims; or

(ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:

- A. its Pro Rata share of Distributable Cryptocurrency in Cash;
- B. its Pro Rata share of Distributable OpCo Cash; and
- C. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to OpCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.

(c) *Voting:* Class 4A is Impaired under the Plan. Holders of Allowed OpCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

5. Class 4B — HoldCo General Unsecured Claims

(a) *Classification:* Class 4B consists of all HoldCo General Unsecured Claims.

(b) *Treatment:* Each Holder of an Allowed HoldCo General Unsecured Claim will receive in exchange for such Allowed HoldCo General Unsecured Claim:

- (i) its Pro Rata share of Distributable HoldCo Cash; and
- (ii) to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to HoldCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.

- (c) *Voting:* Class 4B is Impaired under the Plan. Holders of Allowed HoldCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

6. Class 4C — TopCo General Unsecured Claims

- (a) *Classification:* Class 4C consists of all TopCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed TopCo General Unsecured Claim will receive in exchange for such Allowed TopCo General Unsecured Claim:
  - (i) its Pro Rata share of Distributable TopCo Cash; and
  - (ii) to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of the Wind-Down Trust Assets attributable to TopCo; *provided* that any distributions on account of the Wind-Down Entity Assets or the Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.
- (c) *Voting:* Class 4C is Impaired under the Plan. Holders of Allowed TopCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 5 — Alameda Loan Facility Claims

- (a) *Classification:* Class 5 consists of all Alameda Loan Facility Claims.
- (b) *Treatment:* Each Holder of an Allowed Alameda Loan Facility Claim will receive in exchange for such Allowed Alameda Loan Facility Claim to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets; *provided* that any distributions on account of Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, all Allowed Claims at OpCo, HoldCo, and TopCo, including, but not limited to, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, Allowed Account Holder Claims, Allowed OpCo General Unsecured Claims, Allowed HoldCo General Unsecured Claims, and Allowed TopCo General Unsecured Claims.
- (c) *Voting:* Class 5 is Impaired under the Plan. Holders of Allowed Alameda Loan Facility Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Allowed Alameda Loan Facility Claims are not entitled to vote to accept or reject the Plan.

8. Class 6 — Section 510(b) Claims

- (a) *Classification:* Class 6 consists of all Section 510(b) Claims against TopCo.
- (b) *Allowance:* Notwithstanding anything to the contrary herein, a Section 510(b) Claim against TopCo, if any such Section 510(b) Claim exists, may only become Allowed by Final Order of the Bankruptcy Court.
- (c) *Treatment:* Each Holder of Allowed Section 510(b) Claims against TopCo will receive, to effectuate distributions, if applicable, from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to TopCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims.
- (d) *Voting:* Class 6 is Impaired under the Plan. Holders (if any) of Allowed Section 510(b) Claims against TopCo are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders (if any) of Allowed Section 510(b) Claims against TopCo are not entitled to vote to accept or reject the Plan.

9. Class 7 — Intercompany Claims

- (a) *Classification:* Class 7 consists of all Intercompany Claims.
- (b) *Treatment:* On the Effective Date, all Intercompany Claims shall be, at the option of the Debtors, either (a) Reinstated or (b) converted to equity, otherwise set off, settled, distributed, contributed, or cancelled, in each case in accordance with the Restructuring Transactions Memorandum.
- (c) *Voting:* Holders of Intercompany Claims are either Unimpaired or Impaired, and such Holders of Intercompany Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

10. Class 8 — Intercompany Interests

- (a) *Classification:* Class 8 consists of all Intercompany Interests.
- (b) *Treatment:* On the Effective Date, all Intercompany Interests shall be, at the option of the Debtors, either (a) Reinstated in accordance with Article III.G of the Plan or (b) set off, settled, addressed, distributed, contributed, merged, or cancelled, in each case in accordance with the Restructuring Transactions Memorandum.
- (c) *Voting:* Holders of Intercompany Interests are either Unimpaired or Impaired, and such Holders of Intercompany Interests are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore,



Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

11. Class 9 — Existing Equity Interests

- (a) *Classification:* Class 9 consists of all Existing Equity Interests.
- (b) *Treatment:* Each Holder of Existing Equity Interests will receive, to effectuate distributions, if applicable, from the Wind-Down Entity, its Pro Rata share of the Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets attributable to TopCo; *provided* that any distributions on account of Wind-Down Trust Units shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims.
- (c) *Voting:* Class 9 is Impaired under the Plan. Holders of Existing Equity Interests are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan.

**D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Wind-Down Entity's rights in respect of any Unimpaired Claim, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

**E. Elimination of Vacant Classes; Presumed Acceptance by Non-Voting Classes**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**F. Subordinated Claims**

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims against and Allowed Interests in the Debtors and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Wind-Down Entity reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**G. Intercompany Interests**

To the extent Reinstated under the Plan, distributions (if any) on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience and due to the importance of maintaining the corporate

structure given the existing intercompany systems connecting the Debtors and their Affiliates, and in exchange for the Debtors' and Wind-Down Entity's agreement under the Plan to make certain distributions to the Holders of Allowed Claims.

#### **H. Controversy Concerning Impairment**

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

#### **I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code is satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims or Interests. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

### **ARTICLE IV.**

#### **PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

##### **A. General Settlement of Claims and Interests**

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as well as a finding by the Bankruptcy Court that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

##### **B. Restructuring Transactions**

On or before the Effective Date, the applicable Debtors will take any action as may be necessary or advisable to effectuate the Restructuring Transactions described in the Plan, the Restructuring Transactions Memorandum, and the Customer Onboarding Protocol, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (3) the filing of appropriate

certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (4) the transfer or distribution of any Cryptocurrency or Cash pursuant to the Asset Purchase Agreement, or the Liquidation Procedures, as applicable; (5) the execution and delivery of the Wind-Down Trust Agreement; (6) any transactions necessary or appropriate to form the Wind-Down Entity; (7) such other transactions that are required to effectuate the Restructuring Transactions, including any sales, mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (8) all transactions necessary to provide for the purchase of the Acquired Assets by Purchaser under the Asset Purchase Agreement; and (9) all other actions that the applicable Entities determine to be necessary or appropriate, or that are reasonably requested by the Purchaser in accordance with the Asset Purchase Agreement, including making filings or recordings that may be required by applicable law.

The Confirmation Order shall, and shall be deemed to, pursuant to sections 1123 and 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Restructuring Transactions.

### **C. The Sale Transaction**

If the Sale Transaction is consummated by the Outside Date, pursuant to the terms of the Asset Purchase Agreement, then the following terms shall govern:

On or prior to the Effective Date, the Debtors shall have consummated the Sale Transaction, and, among other things, the Acquired Assets and Assumed Liabilities shall have transferred to the Purchaser free and clear of all Liens, Claims, Interests, charges, or other encumbrances, and the Purchaser shall pay to the Debtors or Holders of Account Holder Claims and Holders of OpCo General Unsecured Claims, as applicable, the proceeds from the Sale Transaction, as and to the extent provided for in the Asset Purchase Agreement, and this Plan. The Confirmation Order shall authorize the Debtors, the Purchaser, and the Wind-Down Entity, as applicable, to undertake the transactions contemplated by the Asset Purchase Agreement, including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code.

The Debtors and Purchaser shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Sale Transaction pursuant to the terms of the Asset Purchase Agreement the Customer Onboarding Protocol, and this Plan. The Debtors shall be authorized to sell any Cryptocurrency to satisfy all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims. On and after the Effective Date, except as otherwise provided in the Plan and the Wind-Down Trust Agreement, the Wind-Down Debtors, the Wind-Down Entity, or the Purchaser, as applicable, may operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

Notwithstanding anything contained in this Plan and any Definitive Documents, if the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated, all provisions contained in this Plan and the Definitive Documents governing the Sale Transaction shall have no further force and effect, and the provisions governing the Liquidation Transaction shall govern. The rights and remedies of the Seller and Purchaser under the Asset Purchase Agreement and any related orders of the Bankruptcy Court shall be expressly preserved.

#### **D. The Liquidation Transaction**

If the Sale Transaction is not consummated by the Outside Date, pursuant to the Asset Purchase Agreement, then the following terms shall govern:

##### *1. The Liquidation Transaction*

On or after the Outside Date, the Debtors will pursue the Liquidation Transaction in accordance with the Liquidation Procedures. Pursuant to the Liquidation Transaction, the Debtors, the Wind-Down Entity, or the Wind-Down Trustee, as applicable, will distribute certain of the Cryptocurrency in-kind to Holders of Account Holder Claims in accordance with Article III.C of the Plan, transfer all Wind-Down Entity Assets or Wind-Down Trust Assets to the Wind-Down Reserve, liquidate certain of the Cryptocurrency, distribute Cash to Holders of Claims, wind down and dissolve the Debtors, and pursue final administration of the Debtors' Estates pursuant to the Bankruptcy Code.

The Debtors, or the Wind-Down Entity, as applicable, shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Liquidation Transaction pursuant to this Plan. On or before the date that is twenty-one days prior to the anticipated commencement of the Liquidation Transaction, the Debtors, or the Wind-Down Entity, as applicable, shall file the Liquidation Procedures with the Bankruptcy Court. Parties in interest shall have ten days to object to the Liquidation Procedures, and if no objections are timely filed, the Liquidation Procedures shall be approved. In the event of a timely objection, the Bankruptcy Court shall adjudicate any objection to the Liquidation Procedures.

On and after the Effective Date, except as otherwise provided in the Plan, the Wind-Down Trust Agreement, and the Liquidation Procedures, the Wind-Down Debtors or the Wind-Down Entity as applicable, may operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

##### *2. Cryptocurrency Rebalancing*

Prior to the Effective Date the Debtors shall, in consultation with the Committee, be authorized to rebalance their Cryptocurrency portfolio, *provided* that such rebalancing shall be in accordance with the Asset Purchase Agreement. The Debtors may effectuate such rebalancing by (i) selling such Cryptocurrency that cannot be distributed to Account Holders, (ii) purchasing Cryptocurrency supported by Voyager's or Purchaser's platform (as provided by the Asset Purchase Agreement) that shall be distributed to Account Holders, and (iii) engaging in any other transaction, including the execution of trades of Cryptocurrency, necessary or appropriate to effectuate distributions of the Distributable Cryptocurrency to Holders of Allowed Account Holder Claims.

#### **E. Management Transition Plan**

The Debtors shall be authorized to implement the Management Transition Plan, the terms of which shall be reasonably acceptable to Purchaser and the Committee and included in the Plan Supplement. The Management Transition Plan shall help ensure that employees are available to provide transition services to the Debtors and/or the Wind-Down Entity to effectuate the Sale Transaction and to wind down the Debtors' Estates.

## F. Non-Released D&O Claims

Any Claims or Causes of Action held by the Debtors or their respective estates against the Debtors' CEO and/or CCO (regardless of any fiduciary capacity in which such individuals were acting) that are expressly related to approval of the 3AC Loan are not released pursuant to the Plan (collectively, the "Non-Released D&O Claims"), and shall be assigned and transferred to the Wind-Down Entity to be pursued, settled, or resolved by the Wind-Down Entity in accordance with the terms of Article IV.G of this Plan and subject to the Wind-Down Reserve. Any claims against the D&O Carriers that the Debtors' insurance transactions within the 90 days prior to the Petition Date are avoidable under the Bankruptcy Code, applicable state law, or both (the "Non-Released Insurance Claims") shall be assigned and transferred to the Wind-Down Entity to be pursued, settled, or resolved solely by the Wind-Down Entity in accordance with the terms of Article IV.G of this Plan. The Wind-Down Entity shall be a successor to the Debtors' rights, title, and interest in any Non-Released D&O Claims and Non-Released Insurance Claims, and the Wind-Down Entity shall have standing to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims in accordance with the terms of Article IV.G of this Plan; *provided* that: (i) any recovery by the Wind-Down Entity (and the beneficiaries thereof) on account of any Non-Released D&O Claim, including in each case by way of settlement or judgment, shall be satisfied solely by and to the extent of the proceeds of the Debtors' available D&O Liability Insurance Policies (and/or from the D&O Carriers directly) after payment from such D&O Liability Insurance Policies of any and all covered costs and expenses incurred in connection with the defense of the Non-Released D&O Claims; (ii) any party, including any trustee or any beneficiary of the Wind-Down Entity, seeking to execute, garnish, or otherwise attempt to collect on any settlement of or judgment in the Non-Released D&O Claims shall do so solely upon available insurance coverage from the Debtors' available D&O Liability Insurance Policies; and (iii) no party shall (a) record any judgment against the CEO or CCO, or (b) otherwise attempt to collect, directly or indirectly, from the personal assets of the CEO or CCO with respect to the Non-Released D&O Claims. For the avoidance of doubt, this provision does not enjoin, limit, or impair direct claims held by third parties against the Debtors' CEO or CCO (if any) other than any direct claims held by Holders of Claims or Interests that opt into the third party release in Article VIII.B of this Plan. Only upon the occurrence of the earlier of (x) a release being given as part of any later settlement of the Non-Released D&O Claims; (y) final resolution of any coverage claims asserted against the Debtors' available D&O Liability Insurance Policies on account of the Non-Released D&O Claims; or (z) exhaustion of the available insurance coverage under the D&O Liability Insurance Policies, the Non-Released D&O Claims shall be released and discharged without the need for further action or Bankruptcy Court order. For the avoidance of doubt, any release of the Non-Released D&O Claims shall not become effective until one of the three conditions stated in the preceding sentence above has been met.

## G. The D&O Settlement

On the Effective Date, the terms of the D&O Settlement shall be effectuated as provided in this Article IV.G.

Pursuant to the D&O Settlement, CEO shall repay the \$1,900,000 received from the Debtors on or around February 28, 2022, by paying the after-tax amount of such transfer (approximately \$1,125,000) to OpCo in cash and assigning the right, if any, to any tax refund for the balance to the Wind-Down Entity. CEO shall subordinate any Claims (including any indemnification claims asserted under this Art. IV.F) he holds against the Debtors until all other Holders of Claims are paid in full. CCO shall subordinate 50 percent of any Claims he holds other than indemnification claims (and 100% of any indemnification claims asserted under this Art. IV.F) against the Debtors until all other Holders of Claims are paid in full; *provided, however*, that in the event the D&O Carriers deny coverage to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.



CEO and CCO, each as insureds, under the D&O Liability Insurance Policies agree: (i) not to draw down on the Side-A Policy; *provided, however*, that should coverage continue to be available under the Side-A Policy following resolution of the Debtors' and/or the Wind-Down Entity's claims for the avoidance of the premium paid for the policy (whether by judgment or settlement or otherwise) such officer shall be entitled to seek coverage under the Side-A Policy to the extent any such coverage remains; and (ii) not to object to any settlement by the Debtors or Wind Down Entity of avoidance claims under the Side-A Policy, even if such settlement results in termination of benefits under the Side-A Policy. For the avoidance of doubt, this agreement is not intended to and shall not alter or amend each of the insureds' duties under the D&O Liability Insurance Policies. In the event that any insurer under the D&O Liability Insurance Policies denies coverage for any reason, the Wind-Down Entity shall have the right to bring a coverage claim against the insurer(s) in the name of the insured, the insureds shall reasonably cooperate with respect to any such claim, and the insured may participate at their election (and at their sole cost). For the avoidance of doubt, nothing contained in this Plan is intended as a waiver or release of the Debtors' and/or Wind-Down Entity's right to assert any Non-Released D&O Claim, but rather limits such recovery in the manner set forth above.

CEO and CCO shall be entitled to receive their salary and benefits for as long as they work for the Debtors and/or the Wind-Down Entity and retain the right to assert claims for advancement and indemnification up to the limits of any available coverage in the event any of the insurers that issued the Management Liability Policy, the Excess Policy, or the Side-A Policy denies coverage to CEO and/or CCO based upon or arising out of the lack of a formal claim for indemnification; *provided, however*, that any such indemnification or advancement claims shall be subordinated in full unless and until all other Holders of Claims are paid in full; *provided, further*, that in the event that any of the D&O Carriers deny coverage to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.

CEO and CCO shall subordinate any and all rights and entitlements under the Cornerstone A-Side Management Liability Insurance Policy to Voyager Digital Ltd., Policy Number ELU184179-22, to any recovery by the Debtors and/or the Wind-Down Entity on account of the Debtors' and/or Wind-Down Entity's claims for the avoidance of the premium paid for the policy. For the avoidance of doubt, should coverage continue to be available under the Side-A Policy following resolution of the Debtors' and/or the Wind-Down Entity's claims for the avoidance of the premium paid for the policy (whether by judgment or settlement or otherwise), CEO and/or CCO shall be entitled to seek coverage under the Side-A Policy. CEO and CCO shall remain at, and continue performing the responsibilities of, their respective position(s) with the Debtors and assist with the Debtors' transition for at least 30 days from entry of the Confirmation Order; *provided* that CCO shall have no obligation to remain at his position with the Debtors beyond January 15, 2023 and the CEO shall have the right to pursue and engage in any employment opportunity, business venture, consulting arrangement, or investment that may become available; *provided, further*, that both the CEO and CCO shall be available to the Debtors and/or the Wind-Down Entity for a maximum of five hours per month for the one year following the Effective Date.

In the event that the sworn financial disclosure statements under penalty of perjury provided to the Debtors, the Special Committee and the Committee by CEO and CCO are later determined at any time by Final Order of the Bankruptcy Court or other court of competent jurisdiction to be materially inaccurate, (a) the limitations on recovery by the Wind-Down Entity under this Article IV.G shall no longer apply, (b) any and all release, exculpation and injunction provisions in Article VIII of this Plan with respect to CEO and/or CCO (as applicable) shall be deemed null and void, (c) all Releasing Parties' rights with respect to the CEO and/or CCO (as applicable) shall be fully intact and preserved, (d) amounts paid by CEO shall not be repaid by the Wind-Down Entity, and (e) any applicable statute of limitations shall be deemed tolled from the Petition Date to the date of entry of the order referenced above. The Wind-Down Trust, as successor to the Debtors, shall have standing to bring a motion seeking relief pursuant to this Article IV.G.



Entry of the Confirmation Order shall be deemed approval of the D&O Settlement and, to the extent not already approved by the Bankruptcy Court, the Debtors or the Wind-Down Debtors, as applicable, are authorized to negotiate, execute, and deliver those documents necessary or appropriate to effectuate the D&O Settlement, without further notice or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors, the Wind-Down Debtors, the Committee, and the Special Committee may deem to be necessary to effectuate the D&O Settlement.

## **H. Wind-Down Trust**

On the Effective Date, the Wind-Down Trust shall be formed for the benefit of the Wind-Down Trust Beneficiaries and each of the Debtors shall transfer the Wind-Down Trust Assets for distribution in accordance with the terms of the Plan. The Confirmation Order shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan.

### **1. Establishment of a Wind-Down Trust**

Pursuant to the Wind-Down Trust Agreement, the Wind-Down Trust will be established. The Wind-Down Trust shall be the successor-in-interest to the Debtors, and the Wind-Down Trust shall be a successor to the Debtors' rights, title, and interest to the Wind-Down Trust Assets. The Wind-Down Trust will conduct no business operations and will be charged with winding down the Debtors' Estates. The Wind-Down Trust shall be managed by the Wind-Down Trustee and shall be subject to a Wind-Down Trust Oversight Committee. For the avoidance of doubt, in the event that the Restructuring Transactions Memorandum specifies that the Wind-Down Debtors will be the Wind-Down Entity, the Wind-Down Debtors shall be managed by the Wind-Down Trustee and shall be subject to the Wind-Down Trust Oversight Committee in the same manner as if the Wind-Down Entity is the Wind-Down Trust. The Wind-Down Trust shall be administered in accordance with the terms of the Wind-Down Trust Agreement and shall be subject to the Wind-Down Reserve and the Non-Released D&O Claim Budget. For the avoidance of doubt, the Wind-Down Trust shall not have any right or interest in any Cause of Action or Claim constituting an Acquired Asset. The Wind-Down Trust shall be administered in a manner consistent with the SEC's published guidance on liquidating trusts.

Prior to the Effective Date, any and all of the Debtors' assets shall remain assets of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and on the Effective Date the Wind-Down Trust Assets shall, subject to the Wind-Down Trust Agreement, be transferred to and vest in the Wind-Down Trust or the Wind-Down Debtors, as applicable. For the avoidance of doubt, to the extent not otherwise waived in writing, released, settled, compromised, assigned or sold pursuant to a prior order or the Plan, the Wind-Down Entity specifically retains and reserves the right to assert, after the Effective Date, any and all of the Vested Causes of Action and related rights, whether or not asserted as of the Effective Date, and all proceeds of the foregoing, subject to the terms of the Plan, including without limitation Article IV.F and Article IV.G.

Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, only the Wind-Down Trust and the Wind-Down Trustee shall have the right to pursue or not to pursue, or, subject to the terms hereof and the Wind-Down Trust Agreement, compromise or settle any Wind-Down Trust Assets transferred to the Wind-Down Trust. On and after the Effective Date, the Wind-Down Trust and the Wind-Down Trustee may, without further Bankruptcy Court approval, commence, litigate, and settle any Vested Causes of Action or Claims relating to any Wind-Down Trust Assets transferred to the Wind-Down Trust or rights to payment or Claims that belong to the Debtors as of the Effective Date or are instituted by the Wind-Down Trust or

the Wind-Down Trustee on or after the Effective Date, except as otherwise expressly provided herein and in the Wind-Down Trust Agreement. All of the Wind-Down Trust's activities shall be subject to the Wind-Down Reserve and the Non-Released D&O Claim Budget. The Wind-Down Trust shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code.

The Wind-Down Trustee shall be deemed hereby substituted as plaintiff, defendant, or in any other capacity for the Debtors in any Causes of Action pending before the Bankruptcy Court or any other court that relates to a Wind-Down Trust Asset without the need for filing any motion for such relief. On the Effective Date, the Debtors and the Wind-Down Trustee shall execute the Wind-Down Trust Agreement and shall have established the Wind-Down Trust pursuant hereto. In the event of any conflict between the terms of this Article IV.H and the terms of the Wind-Down Trust Agreement, the terms of the Wind-Down Trust Agreement shall control.

## 2. Wind-Down Entity Assets

Notwithstanding any prohibition on assignability under applicable non-bankruptcy law, on the Effective Date and thereafter if additional Wind-Down Entity Assets become available, the Debtors shall be deemed, subject to the Wind-Down Trust Agreement, to have automatically transferred to the applicable Wind-Down Entity all of their right, title, and interest in and to all of the Wind-Down Trust Assets, in accordance with section 1141 of the Bankruptcy Code. All such assets shall automatically vest in the Wind-Down Entity free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims and Interests as set forth herein and the expenses of the Wind-Down Trust as set forth herein and in the Wind-Down Trust Agreement. Thereupon, the Debtors shall have no interest in or with respect to the Wind-Down Entity Assets or the Wind-Down Trust.

## 3. Treatment of Wind-Down Trust for Federal Income Tax Purposes; No Successor-in-Interest

The Wind-Down Trust shall be established for the primary purpose of liquidating and distributing the Wind-Down Trust Assets transferred to it, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Wind-Down Trust. Accordingly, the Wind-Down Trustee may, in an expeditious but orderly manner, liquidate the Wind-Down Trust Assets, make timely distributions to the Wind-Down Trust Beneficiaries and not unduly prolong its duration. The Wind-Down Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Wind-Down Trust Agreement. The record holders of beneficial interests shall be recorded and set forth in a register maintained by the Wind-Down Trustee expressly for such purpose.

The Wind-Down Trust is intended to qualify as a "grantor trust" for federal income tax purposes to the extent reasonably practicable, with the Wind-Down Trust Beneficiaries treated as grantors and owners of the Wind-Down Trust. However, with respect to any of the assets of the Wind-Down Trust that are subject to potential disputed claims of ownership or uncertain distributions, *or* to the extent "liquidating trust" treatment is otherwise unavailable, the Debtors anticipate that such assets will be subject to disputed ownership fund treatment under Section 1.468B-9 of the Treasury Regulations, that any appropriate elections with respect thereto shall be made, and that such treatment will also be applied to the extent possible for state and local tax purposes. Under such treatment, a separate federal income tax return shall be filed with the IRS for any such account. Any taxes (including with respect to interest, if any, earned in the account) imposed on such account shall be paid out of the assets of the respective account

(and reductions shall be made to amounts disbursed from the account to account for the need to pay such taxes).

#### 4. Appointment of Wind-Down Trustee

The Wind-Down Trustee shall be selected by the Committee, in consultation with the Debtors, and shall be identified in the Plan Supplement. The appointment of the Wind-Down Trustee shall be approved in the Confirmation Order, and the Wind-Down Trustee's duties shall commence as of the Effective Date. The Wind-Down Trustee shall administer the distributions to the Wind-Down Trust Beneficiaries and shall serve as a representative of the Estates under section 1123(b) of the Bankruptcy Code for the purpose of enforcing Vested Causes of Action belonging to the Estates that are not released, waived, settled, compromised, or transferred pursuant to the Plan and subject to the limitations set forth in the Plan, including Article IV.F and Article IV.G.

In accordance with the Wind-Down Trust Agreement, the Wind-Down Trustee shall serve in such capacity through the earlier of (i) the date on which the Wind-Down Trust is dissolved in accordance with the Wind-Down Trust Agreement, and (ii) the date on which a Wind-Down Trustee resigns, is terminated, or is otherwise unable to serve; *provided, however*, that, in the event that a Wind-Down Trustee resigns, is terminated, or is otherwise unable to serve, the Wind-Down Trust Oversight Committee shall appoint a successor to serve as a Wind-Down Trustee in accordance with the Wind-Down Trust Agreement. If the Wind-Down Trust Oversight Committee does not appoint a successor within the time periods specified in the Wind-Down Trust Agreement, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Wind-Down Trust, shall approve a successor to serve as a Wind-Down Trustee.

#### 5. Responsibilities of Wind-Down Trustee

Responsibilities of the Wind-Down Trustee shall be as identified in the Wind-Down Trust Agreement and shall include, but are not limited to:

- (a) Implementing the Wind-Down Trust, and making the distributions contemplated by the Plan;
- (b) Marshalling, marketing for sale, and wind-down of any of the Debtors' assets constituting Wind-Down Trust Assets;
- (c) Filing and prosecuting any objections to Claims or Interests or settling or otherwise compromising such Claims and Interests, if necessary and appropriate, in accordance with the Plan hereof;
- (d) Commencing, prosecuting, or settling claims and Vested Causes of Action;
- (e) Recovering and compelling turnover of the Debtors' property;
- (f) Prosecuting and settling the 3AC Claims, FTX Claims, and Alameda Claims;
- (g) Paying Wind-Down Trust Expenses;
- (h) Abandoning any Debtor assets that cannot be sold or otherwise disposed of for value and where a distribution to Holders of Allowed Claims or Interests would not be feasible or cost-effective in the Wind-Down Trustee's reasonable judgment;

- (i) Preparing and filing post-Effective Date operating reports (including the month in which the Effective Date occurs);
- (j) Filing appropriate tax returns in the exercise of the Wind-Down Trustee's fiduciary obligations;
- (k) Retaining such Professionals as are necessary and appropriate in furtherance of the Wind-Down Trustee's fiduciary obligations; and
- (l) Taking such actions as are necessary and reasonable to carry out the purposes of the Wind-Down Trust, including winding down the Debtors' business affairs.

6. The Wind-Down Trust Oversight Committee

The Wind-Down Trust Oversight Committee shall consist of those parties selected by the Committee and identified in the Plan Supplement, and which, at no time shall consist of greater than seven members.

The Wind-Down Trust Oversight Committee shall have the responsibility to review and advise the Wind-Down Trustee with respect to the liquidation and distribution of the Wind-Down Entity Assets transferred to the Wind-Down Trust in accordance herewith and the Wind-Down Trust Agreement. For the avoidance of doubt, in advising the Wind-Down Trustee, the Wind-Down Trust Oversight Committee shall maintain the same fiduciary responsibilities as the Wind-Down Trustee. Vacancies on the Wind-Down Trust Oversight Committee shall be filled by a Person designated by the remaining member or members of the Wind-Down Trust Oversight Committee from among the Holders of Account Holder Claims. The Wind-Down Trustee shall have the authority to seek an order from the Bankruptcy Court removing or replacing members of the Wind-Down Trust Oversight Committee for cause.

7. Expenses of Wind-Down Trustee

The Wind-Down Trust Expenses shall be paid from the Wind-Down Trust Assets subject to the Wind-Down Reserve and the Non-Released D&O Claim Budget.

8. Insurance; Bond

The Wind-Down Trustee may obtain insurance coverage (in the form of an errors and omissions policy or otherwise) with respect to the liabilities and obligations of the Wind-Down Trustee and the Wind-Down Trust Oversight Committee under the Wind-Down Trust Agreement. Unless otherwise agreed to by the Wind-Down Trust Oversight Committee, the Wind-Down Trustee shall serve with a bond, the terms of which shall be agreed to by the Wind-Down Trust Oversight Committee, and the cost and expense of which shall be paid by the Wind-Down Trust.

9. Fiduciary Duties of the Wind-Down Trustee

Pursuant hereto and the Wind-Down Trust Agreement and the Wind-Down Trustee shall act in a fiduciary capacity on behalf of the interests of all Holders of Claims and Interests that will receive distributions pursuant to Plan.

10. Termination of the Wind-Down Trust

The Wind-Down Trust will terminate on the earlier of: (a) (i) the final liquidation, administration and distribution of the Wind-Down Trust Assets in accordance with the terms of the Wind-Down Trust Agreement and the Plan, and its full performance of all other duties and functions as set forth herein or in the Wind-Down Trust Agreement and (ii) the Chapter 11 Cases of the Debtors have been closed; or (b) the Wind-Down Trustee determines in its reasonable judgment that the Wind-Down Trust lacks sufficient assets and financial resources, after reasonable collection efforts, to complete the duties and powers assigned to him or her under the Plan, the Confirmation Order and/or the Wind-Down Trust Agreement. After (x) the final distributions pursuant hereto, (y) the Filing by or on behalf of the Wind-Down Trust of a certification of dissolution with the Bankruptcy Court, and (z) any other action deemed appropriate by the Wind-Down Trustee, the Wind-Down Trust shall be deemed dissolved for all purposes without the necessity for any other or further actions.

11. Liability of Wind-Down Trustee; Indemnification

Neither the Wind-Down Trustee, the Wind-Down Trust Oversight Committee, their respective members, employees, employers, designees or professionals, or any of their duly designated agents or representatives (each, a “Wind-Down Trust Party” and collectively, the “Wind-Down Trust Parties”) shall be liable for losses, claims, damages, liabilities or expenses in connection with the affairs of the Wind-Down Trust or for the act or omission of any other Wind-Down Trust Party, nor shall the Wind-Down Trust Parties be liable for any act or omission taken or omitted to be taken pursuant to the discretion, powers and authority conferred, or in good faith believed to be conferred by the Wind-Down Trust Agreement or the Plan other than for specific acts or omissions resulting from such Wind-Down Trust Party’s willful misconduct, gross negligence or actual fraud. Subject to the Wind-Down Trust Agreement, the Wind-Down Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee, and the Wind-Down Trust Oversight Committee shall be entitled to enjoy all of the rights, powers, immunities and privileges of an official committee of unsecured creditors. The Wind-Down Trustee or the Wind-Down Trust Oversight Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Wind-Down Trustee nor the Wind-Down Trust Oversight Committee shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Wind-Down Trustee, the Wind-Down Trust Oversight Committee, or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or actual fraud. The Wind-Down Trust shall indemnify and hold harmless the Wind-Down Trust Parties (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys’ fees, disbursements, and related expenses) that such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Wind-Down Trust or the Plan or the discharge of their duties hereunder; *provided, however*, that no such indemnification will be made to such Persons for actions or omissions as a result of willful misconduct, gross negligence, or actual



fraud. Persons dealing or having any relationship with the Wind-Down Trustee shall have recourse only to the Wind-Down Trust Assets and shall look only to the Wind-Down Trust Assets to satisfy any liability or other obligations incurred by the Wind-Down Trustee or the Wind-Down Trust Oversight Committee to such Person in carrying out the terms of the Wind-Down Trust Agreement, and neither the Wind-Down Trustee nor the Wind-Down Trust Oversight Committee, shall have any personal obligation to satisfy any such liability. The Wind-Down Trustee and/or the Wind-Down Trust Oversight Committee members shall not be liable whatsoever except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into the Wind-Down Trust Agreement against any of them. The Wind-Down Trust shall promptly pay expenses reasonably incurred by any Wind-Down Trust Party in defending, participating in, or settling any action, proceeding or investigation in which such Wind-Down Trust Party is a party or is threatened to be made a party or otherwise is participating in connection with the Wind-Down Trust Agreement or the duties, acts or omissions of the Wind-Down Trustee or otherwise in connection with the affairs of the Wind-Down Trust, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Wind-Down Trust Party hereby undertakes, and the Wind-Down Trust hereby accepts his or her undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such exculpated party is not entitled to be indemnified therefor under the Wind-Down Trust Agreement. The foregoing indemnity in respect of any Wind-Down Trust Party shall survive the termination of such Wind-Down Trust Party from the capacity for which they are indemnified.

12. No Liability of the Wind-Down Trust.

On and after the Effective Date, the Wind-Down Trust shall have no liability on account of any Claims or Interests except as set forth herein and in the Wind-Down Trust Agreement. All payments and all distributions made by the Wind-Down Trustee hereunder shall be in exchange for all Claims or Interests against the Debtors.

**I. Sources of Consideration for Plan Distributions**

Distributions under the Plan shall be funded by (i) the proceeds of Purchaser's payment obligations under Sections 2.1 and 2.2 of the Asset Purchase Agreement and distributions of Acquired Coins pursuant to Sections 6.12, and 6.14 of the Asset Purchase Agreement, (ii) the Wind-Down Entity or Wind-Down Trust (as applicable) from the Wind-Down Entity Assets or Wind-Down Trust Assets (as applicable); *provided, however*, that Allowed Professional Fee Claims shall be paid from the Professional Fee Escrow Account in the first instance. The Wind-Down Entity Assets or Wind-Down Trust Assets (as applicable) shall be used to pay the Wind-Down Entity Expenses (including the compensation of the Wind-Down Trustee and any professionals retained by the Wind-Down Trust), and to satisfy payment of Allowed Claims and Interests as set forth in the Plan.

**J. Corporate Existence and Dissolution**

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) in effect prior to the Effective Date, except to the extent such certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation



documents) are amended pursuant to the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings under applicable state or federal law).

On and after the Effective Date, the Wind-Down Entity will be authorized and directed to implement the Plan and any applicable orders of the Bankruptcy Court, and the Wind-Down Entity shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

Upon a certification to be Filed with the Bankruptcy Court by the Wind-Down Trustee of all distributions having been made and completion of all of its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Wind-Down Debtors shall be deemed to be dissolved without any further action by the Wind-Down Debtors, including the Filing of any documents with the secretary of state for the state in which the Wind-Down Debtors are formed or any other jurisdiction. The Wind-Down Trustee, however, shall have authority to take all necessary actions to dissolve the Wind-Down Debtors in and withdraw the Wind-Down Debtors from applicable states.

As soon as practicable after the Effective Date, the Wind-Down Entity shall take such actions as the Wind-Down Entity may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Wind-Down Entity on behalf of any Wind-Down Debtor without need for any action or approval by the shareholders or board of directors or managers of such Debtor. On and after the Effective Date, the Wind-Down Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. Notwithstanding such Debtors' dissolution, such Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

## **K. Corporate Action**

Upon the Effective Date, all actions contemplated under the Plan, Definitive Documents, and Asset Purchase Agreement shall be deemed authorized and approved in all respects, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, managing-members, limited or general partners, or officers of the Debtors, the Wind-Down Debtors, the Wind-Down Trust or any other Entity, including: (1) appointment of the directors, managers, members, and officers for the Wind-Down Debtors as provided herein; (2) the issuances, transfer, and distribution of the Wind-Down Trust Units; (3) the formation of the Wind-Down Trust and appointment of the Wind-Down Trustee and Wind-Down Trust Oversight Committee; (4) the formation of any entities pursuant to and the implementation of the Plan and performance of all actions and transactions contemplated hereby and thereby; (5) the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; and (6) all other acts or actions contemplated by the Plan, Definitive Documents, and Asset Purchase Agreement or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions (including effectuating the Restructuring Transactions Memorandum and the Customer Onboarding Protocol) (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan, Definitive Documents, and Asset Purchase Agreement involving the corporate structure of the Debtors or the Wind-Down Debtors, as applicable, and any corporate action required by the Debtors or the Wind-Down Debtors, as applicable, in connection with the Plan shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the

Wind-Down Debtors, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Wind-Down Debtors or the Wind-Down Trust, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, Securities, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Wind-Down Debtors, and any and all other agreements, documents, Securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Article IV.K shall be effective notwithstanding any requirements under non-bankruptcy law.

**L. Vesting of Assets in the Wind-Down Entity**

Except as otherwise provided in the Plan, or in any agreement, instrument, or other document incorporated in the Plan, notwithstanding any prohibition of assignability under applicable non-bankruptcy law and in accordance with section 1141 of the Bankruptcy Code, on the Effective Date, all property constituting Wind-Down Trust Assets, including all Vested Causes of Action of the Debtors (unless otherwise released, waived, compromised, settled, transferred, or discharged pursuant to the Plan), and any property acquired by any of the Debtors under the Plan shall vest in the Wind-Down Entity, free and clear of all Liens, Claims, charges, or other encumbrances.

**M. Cancellation of Notes, Instruments, Certificates, and Other Documents**

On the later of the Effective Date and the date on which distributions are made pursuant to the Plan (if not made on the Effective Date), except for the purpose of evidencing a right to and allowing Holders of Claims and Interests to receive a distribution under the Plan or to the extent otherwise specifically provided for in the Plan, the Confirmation Order, or any agreement, instrument, or other document entered into in connection with or pursuant to the Plan or the Restructuring Transactions (including, without limitation, the Definitive Documents and the Asset Purchase Agreement), all notes, bonds, indentures, certificates, Securities, shares, purchase rights, options, warrants, collateral agreements, subordination agreements, intercreditor agreements, or other instruments or documents directly or indirectly evidencing, creating, or relating to any indebtedness or obligations of, or ownership interest in, the Debtors, giving rise to any Claims against or Interests in the Debtors or to any rights or obligations relating to any Claims against or Interests in the Debtors shall be deemed cancelled without any need for a Holder to take further action with respect thereto.

**N. Effectuating Documents; Further Transactions**

On and after the Effective Date, the Wind-Down Debtors, and its directors, managers, partners, officers, authorized persons, and members thereof, and the Wind-Down Trust and Wind-Down Trustee are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, Definitive Documents, and Asset Purchase Agreement, in the name of and on behalf of the Wind-Down Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

**O. Section 1146(a) Exemption**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Wind-Down Debtor, the Wind-Down Trust, the Purchaser, or to any other Entity) of property under the Plan, Definitive Documents, and Asset Purchase Agreement or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or

the Wind-Down Debtors; (2) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, including the Asset Purchase Agreement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### **P. Preservation of Rights of Action**

In accordance with section 1123(b) of the Bankruptcy Code, the Wind-Down Entity shall succeed to all rights to commence and pursue any and all Vested Causes of Action of the Debtors, whether arising before or after the Petition Date, including, without limitation, any actions specifically enumerated in the Schedule of Retained Causes of Action other than Causes of Action released, waived, settled, compromised, or transferred. Such rights shall be preserved by the Debtors and Wind-Down Debtors and shall vest in the Wind-Down Entity, with the Wind-Down Entity's rights to commence, prosecute, or settle such Causes of Action preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action expressly released, waived, settled, compromised, or transferred by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan or pursuant to the Asset Purchase Agreement, which shall be deemed released and waived by the Debtors and Wind-Down Debtors as of the Effective Date.

The Wind-Down Trust may pursue such Causes of Action, as appropriate, in accordance with the best interests of the beneficiaries of the Wind-Down Trust and in accordance with the Wind-Down Trust Agreement and the Plan. **No Entity may rely on the absence of a specific reference in the Schedules of Assets and Liabilities or Statement of Financial Affairs, the Plan, the Plan Supplement, the Disclosure Statement, or the Schedule of Retained Causes of Action to any Cause of Action against it as any indication that the Debtors, the Wind-Down Debtors or the Wind-Down Trust, as applicable, will not pursue any and all available Causes of Action of the Debtors against it. The Wind-Down Trust, on behalf of the Debtors and the Wind-Down Debtors, expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise provided in the Plan, including Article VIII of the Plan.** Unless any Cause of Action of the Debtors is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or pursuant to a Final Order, the Wind-Down Trust, on behalf of the Debtors and Wind-Down Debtors and in accordance with the Wind-Down Trust Agreement, expressly reserves all such Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation or Consummation.

The Wind-Down Trust, on behalf of the Debtors and Wind-Down Debtors, reserves and shall retain such Causes of Action of the Debtors notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold against any Entity shall vest in the Wind-Down Trust, except as otherwise provided in the Plan, including Article VIII of the Plan. The Wind-Down Trust, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Wind-Down Trust shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court in accordance with the Plan.

**Q. Election to Contribute Third-Party Claims**

Because aggregating all Contributed Third-Party Claims may enable the pursuit and settlement of such litigation claims in a more efficient and effective manner, each Holder of a Claim or Interest may agree, by electing on its ballot or opt-in form, to contribute its Contributed Third-Party Claims to the Wind-Down Entity. By electing such option on its ballot or opt-in form, each Contributing Claimant agrees that, subject to the occurrence of the Effective Date and the formation of the Wind-Down Entity, it will be deemed, without further action, (i) to have irrevocably contributed its Contributed Third-Party Claims to the Wind-Down Entity, and (ii) to have agreed to execute any documents reasonably requested by the Debtors or the Wind-Down Entity to memorialize and effectuate such contribution.

**R. Contribution of Contributed Third-Party Claims**

On the Effective Date, all Contributed Third-Party Claims will be irrevocably contributed to the Wind-Down Entity and shall thereafter be Wind-Down Trust Assets for all purposes. No Person may rely on the absence of a specific reference in the Plan, the Disclosure Statement, the Confirmation Order, the Wind-Down Trust Agreement, the Plan Supplement, or any other document as any indication that the Wind-Down Trust will or will not pursue any and all available Contributed Third-Party Claims against such Person. The Wind-Down Trust shall have, retain, reserve, and be entitled to assert all Contributed Third-Party Claims fully to the same extent that the Contributing Claimants could have asserted such claims prior to the Effective Date. For the avoidance of doubt, the Contributed Third-Party Claims shall not include the rights of any of the Contributing Claimants to receive the distributions under the Plan on account of their Claims or Interests.

**S. Closing the Chapter 11 Cases**

On and after the Effective Date, the Wind-Down Entity shall be permitted to classify all of the Chapter 11 Cases of the Debtors except for the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, as closed, and all contested matters relating to any of the Debtors, including objections to Claims or Interests and any adversary proceedings, may be administered and heard in the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date,

irrespective of whether such Claims or Interests were Filed or such adversary proceeding was commenced against a Debtor whose Chapter 11 Case was closed.

## **ARTICLE V.**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **A. Assumption and Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy other than the Side-A Policy. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

#### **B. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or the Wind-Down Debtors, as applicable, under such Executory Contract or Unexpired Lease. Without limiting the general nature of the foregoing, and notwithstanding any non-bankruptcy law to the contrary, the Debtors and Wind-Down Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to any rejected Executory Contract or Unexpired Lease.

#### **C. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Counterparties to Executory Contracts or Unexpired Leases listed subject to rejection under the Plan shall be served with a notice of rejection of Executory Contracts and Unexpired Leases with the Plan Supplement. Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Claims, Noticing, and Solicitation Agent and served on the Debtors or Wind-Down Entity, as applicable, no later than thirty days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, or the Wind-Down Entity, the Estates, or their property without the need for any objection by the Wind-Down Entity or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed released, and be subject to the permanent injunction set forth in Article VIII.D of the Plan, including any Claims against any**



**Debtor listed on the Debtors' schedules as unliquidated, contingent, or disputed.** All Allowed Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease shall be treated as General Unsecured Claims in accordance with Article III.C of the Plan.

**D. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed**

The Debtors, the Wind-Down Entity, or the Purchaser, as applicable pursuant to the Asset Purchase Agreement, shall pay Cures, if any, on the Effective Date. The Debtors shall provide notice of the amount and timing of payment of any such Cure to the parties to the applicable assumed Executory Contracts or Unexpired Leases as part of the Plan Supplement. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure that differ from the ordinary course amounts paid or proposed to be paid by the Debtors, the Wind-Down Entity, or the Purchaser shall be dealt with in the ordinary course of business and, if needed, shall be Filed with the Claims, Noticing, and Solicitation Agent on or before thirty days after the Effective Date. **If any counterparty to an Executory Contract or Unexpired Lease does not receive a notice of assumption and applicable cure amount, such counterparty shall have until on or before thirty days after the Effective Date to bring forth and File a request for payment of Cure.** Any such request that is not timely Filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Wind-Down Debtor or the Wind-Down Entity, without the need for any objection by the Wind-Down Entity or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied and released upon payment by the Debtors or the Wind-Down Entity or the Purchaser of the Cure in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty); *provided, however*, that nothing herein shall prevent the Wind-Down Entity or the Purchaser, as applicable, from paying any Cure Claim despite the failure of the relevant counterparty to File such request for payment of such Cure. The Wind-Down Entity or the Purchaser may also settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be Filed with the Bankruptcy Court on or before thirty days after the Effective Date. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' first scheduled omnibus hearing for which such objection is timely Filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

In the event of a dispute regarding: (1) the amount of any Cure Claim, (2) the ability of the Wind-Down Debtors, Purchaser, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed (or assumed and assigned, as applicable), or (3) any other matter pertaining to assumption or assignment, then any disputed Cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made as soon as reasonably practicable following, and in accordance with, the entry of a Final Order of the Bankruptcy Court resolving such dispute or as may be agreed upon by the Debtors, the Wind-Down Entity, or Purchaser, as applicable, and the counterparty to the Executory Contract or Unexpired Lease, and any such unresolved dispute shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise or assignment of any Executory Contract or Unexpired Lease to the Purchaser and full payment of any applicable Cure pursuant to this Article V.D, or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty), shall result in the full release and satisfaction of any Cures,



Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assumed and assigned in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure has been fully paid pursuant to this Article V.D, in the amount and at the time in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty), shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, in the event that any counterparty to an Executory Contract or Unexpired Lease receives a notice of assumption and applicable proposed Cure amount, and disputes the Debtors' proposed Cure amount, such party shall not be required to File a Proof of Claim with respect to such dispute. Any counterparty to an Executory Contract or Unexpired Lease that does not receive a notice or applicable proposed Cure amount, and believes a Cure amount is owed, shall have thirty days after the Effective Date to File a Proof of Claim with respect to such alleged Cure amount, which Claim shall not be expunged until such Cure dispute is resolved.**

#### **E. Insurance Policies and Surety Bonds**

Each D&O Liability Insurance Policy (including, without limitation, any "tail policy" and all agreements, documents, or instruments related thereto) other than the Side-A Policy shall be assumed, in their entirety, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date, pursuant to sections 105 and 365 of the Bankruptcy Code with the Wind-Down Entity being authorized to pursue any proceeds thereof on behalf of the Debtors or the Wind-Down Entity. The Side-A Policy shall ride through these Chapter 11 Cases with the Debtors, and the Wind-Down Entity preserves all avoidance and other actions in connection with the premium paid thereunder. All beneficiaries under the D&O Insurance Policies reserve their rights under such D&O Insurance Policies subject to the limitations set forth in this Plan.

The Debtors or the Wind-Down Entity, as applicable, shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policy (including, without limitation, any "tail policy" and all agreements, documents, or instruments related thereto) in effect prior to the Effective Date, and any current and former directors, officers, managers, and employees of the Debtors who served in such capacity at any time before or after the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy subject to the terms thereof regardless of whether such directors, officers, managers, and employees remain in such positions after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Debtors or the Wind-Down Entity shall retain the ability to supplement such D&O Liability Insurance Policy as the Debtors or Wind-Down Entity may deem necessary, subject to the prior written consent of the Wind-Down Entity. Notwithstanding anything to the contrary contained in the Plan, the Wind-Down Trust shall be entitled to pursue avoidance of the premium paid for the XL Specialty Insurance Company Cornerstone A-Side Management Liability Insurance Policy No. ELU184179-22, and nothing in this Plan shall be deemed a waiver or abrogation of any such rights.

The Debtors shall continue to satisfy their obligations under their surety bonds and insurance policies in full and continue such programs in the ordinary course of business. Each of the Debtors' surety bonds and insurance policies, and any agreements, documents, or instruments relating thereto shall be treated as Executory Contracts under the Plan. On the Effective Date: (a) the Debtors shall be deemed to have assumed all such surety bonds and insurance policies and any agreements, documents, and instruments relating thereto in their entirety; *provided* that the Debtors have assumed all indemnity agreements and cash

collateral agreements related to the surety bonds and (b) such surety bonds and insurance policies and any agreements, documents, or instruments relating thereto shall revert in the applicable Wind-Down Debtor(s) unaltered.

**F. Reservation of Rights**

Nothing contained in the Plan or the Plan Supplement (unless otherwise explicitly provided) shall constitute an admission by the Debtors or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Wind-Down Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Wind-Down Entity, as applicable, shall have forty-five days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease, including by rejecting such contract or lease effective as of the Confirmation Date.

**G. Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**H. Contracts and Leases Entered into After the Petition Date**

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed under section 365 of the Bankruptcy Code, will be performed by the applicable Debtor or Wind-Down Debtor liable thereunder in the ordinary course of its business. Such contracts and leases that are not rejected under the Plan shall survive and remain unaffected by entry of the Confirmation Order.

**ARTICLE VI.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Timing and Calculation of Amounts to Be Distributed**

Except (1) as otherwise provided herein, (2) upon a Final Order, or (3) as otherwise agreed to by the Debtors, the Purchaser, or the Wind-Down Entity, as the case may be, and the Holder of the applicable Claim, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the next Distribution Date after such Claim becomes, as applicable, an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim shall receive the full amount of distributions that the Plan provides for Allowed Claims in the applicable Class from the Distribution Agent. In the event that any payment or distribution under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or distribution may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as specifically provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

## **B. Rights and Powers of Distribution Agent**

### **1. Powers of the Distribution Agent**

The Distribution Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties and exercise its rights under the Plan; (b) make all distributions contemplated under the Plan; (c) employ professionals to represent it with respect to its responsibilities and powers; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

### **2. Expenses Incurred on or after the Effective Date**

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Distribution Agent on or after the Effective Date and any reasonable compensation and expense reimbursement claims (including reasonable attorney and/or other professional fees and expenses) made by such Distribution Agent shall be paid in Cash by the Wind-Down Entity.

## **C. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

### **1. Distributions Generally**

Except as otherwise provided in the Plan (including in paragraph 8 below), the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the applicable register or in the Debtors' records as of the date of any such distribution (as applicable), including the address set forth in any Proof of Claim filed by that Holder.

### **2. Distributions on Account of Obligations of Multiple Debtors**

For all purposes associated with distributions under the Plan, all guarantees by any Debtor of the obligations of any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be deemed eliminated so that any obligation that could otherwise be asserted against more than one Debtor shall result in a single distribution under the Plan. Any such Claims shall be subject to all potential objections, defenses, and counterclaims, and to estimation pursuant to section 502(c) of the Bankruptcy Code.

### **3. Record Date of Distributions**

On the Distribution Record Date, the various transfer registers for each Class of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes in the record Holders of any Claims or Interests. The Distribution Agent shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date. In addition, with respect to payment of any Cure amounts or disputes over any Cure amounts, neither the Debtors nor the Distribution Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable Executory Contract or Unexpired Lease as of the Effective Date, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure amount.

### **4. Special Rules for Distributions to Holders of Disputed Claims and Interests**

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the Wind-Down Entity, on the one hand, and the Holder of a Disputed Claim or Interest, on the other hand, or

as set forth in a Final Order, no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Interest until all of the Disputed Claim or Interest has become an Allowed Claim or Interest or has otherwise been resolved by settlement or Final Order; *provided* that, if the Wind-Down Entity does not dispute a portion of an amount asserted pursuant to an otherwise Disputed Claim or Interest, the Distribution Agent may make a partial distribution on account of that portion of such Claim or Interest that is not Disputed at the time and in the manner that the Distribution Agent makes distributions to similarly situated Holders of Allowed Claims or Interests pursuant to the Plan. Any dividends or other distributions arising from property distributed to Holders of Allowed Claims or Interests, as applicable, in a Class and paid to such Holders under the Plan shall also be paid, in the applicable amounts, to any Holder of a Disputed Claim or Interest, as applicable, in such Class that becomes an Allowed Claim or Interest after the date or dates that such dividends or other distributions were earlier paid to Holders of Allowed Claims or Interests in such Class.

5. De Minimis Distributions; Minimum Distributions

The Distribution Agent shall not make any Cash distributions to any Holder of an Allowed Claim or Interest pursuant to Article III.C.1-11 of this Plan on account of such Allowed Claim or Interest if such distribution is valued, in the reasonable discretion of the Distribution Agent, at less than \$1.00, and each Holder of an Allowed Claim or Interest to which this limitation applies shall not be entitled to any distributions under the Plan. Notwithstanding anything to the contrary in this Plan, there shall be no minimum distribution threshold on account of distributions of any Cryptocurrency to Holders of Allowed Account Holder Claims and Allowed OpCo General Unsecured Claims.

6. Undeliverable Distributions and Unclaimed Property

In the event that either (a) a distribution to any Holder is returned as undeliverable or (b) the Holder of an Allowed Claim or Interest does not respond to a request by the Debtors or the Distribution Agent for information necessary to facilitate a particular distribution, no distribution to such Holder shall be made unless and until the Distribution Agent has determined the then-current address of such Holder or received the necessary information to facilitate a particular distribution, at which time such distribution shall be made to such Holder without interest, dividends, or other accruals of any kind; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code on the date that is one year after the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Wind-Down Entity automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable local, state, federal, or foreign escheat, abandoned, or unclaimed property laws to the contrary), and the Claim or Interest of any Holder to such property or interest in property shall not be entitled to any distributions under the Plan.

7. Manner of Payment Pursuant to the Plan

At the option of the Distribution Agent, any Cash payment to be made hereunder may be made by check, wire transfer, automated clearing house, credit card, or as otherwise provided in applicable agreements.

8. Distributions of Net Owed Coins; Additional Bankruptcy Distributions

As a general matter, the Purchaser will allocate each Account Holder's Net Owed Coins to its account on the Binance.US Platform, and each Holder of OpCo General Unsecured Claim's Pro Rata share of the Distributable Cryptocurrency (in Cash) to its account on the Binance.US Platform in accordance with, and subject to, the provisions of Section 6.12 of the Asset Purchase Agreement.

As a general matter, the Customer Onboarding Protocol will provide that Purchaser will make Additional Bankruptcy Distributions to Transferred Creditors corresponding to their Pro Rata shares of such Additional Bankruptcy Distribution (if such Additional Bankruptcy Distribution is in Cryptocurrency, based on the Transferred Cryptocurrency Value of the Cryptocurrency included in such Additional Bankruptcy Distribution), all in accordance with any applicable Post-Bankruptcy Statement (as defined in the Asset Purchase Agreement).

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim does not become a Transferred Creditor prior to the date that is three (3) months following the later of the Closing Date or the date on which the terms and conditions for the Binance.US Platform are made available for such Person to accept (as provided in the Customer Onboarding Protocol), then Purchaser shall convert any Cryptocurrency allocable to such Person into U.S. Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such U.S. Dollars, together with any cash or others assets in respect of such Persons, to the Debtors within five (5) Business Days, for further distribution by the Debtors in accordance with this Plan and the Customer Onboarding Protocol.

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim is located in an Unsupported Jurisdiction (as defined in the Asset Purchase Agreement), then the Net Owed Coins, if applicable, and Additional Bankruptcy Distributions allocable to such Person shall be handled pursuant to Section 6.12(b) or, if applicable, Section 6.14(d) of the Asset Purchase Agreement.

Purchaser shall have no responsibility to make any distributions other than as contemplated by Sections 6.12 and 6.14 of the Asset Purchase Agreement.

#### **D. Compliance Matters**

In connection with the Plan, to the extent applicable, the Debtors, the Wind-Down Entity, any Distribution Agent, and any other applicable withholding and reporting agents shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Wind-Down Entity, the Distribution Agent, and any other applicable withholding and reporting agents shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including wind-down a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms that are reasonable and appropriate; *provided* that the Wind-Down Entity and the Distribution Agent, as applicable, shall request appropriate documentation from the applicable distributees and allow such distributees a reasonable amount of time to respond. The Debtors, the Wind-Down Entity, the Distribution Agent, and any other applicable withholding and reporting agents reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

#### **E. Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim, asserted in government issued currency (for the avoidance of doubt, not including any Cryptocurrency) other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using



the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

## **F. Claims Paid or Payable by Third Parties**

### **1. Claims Paid by Third Parties**

The Debtors or the Wind-Down Entity, as applicable, shall reduce a Claim or Interest, and such Claim or Interest (or portion thereof) shall be disallowed without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim or Interest receives a payment on account of such Claim or Interest from a party that is not a Debtor or Wind-Down Debtor (or other Distribution Agent), as applicable, including any payments made in connection with the Sale Transaction. To the extent a Holder of a Claim or Interest receives a distribution on account of such Claim or Interest and receives payment from a party that is not a Debtor or a Wind-Down Debtor (or other Distribution Agent), including payments made in connection with the Sale Transaction, as applicable, on account of such Claim or Interest, such Holder shall, within ten Business Days of receipt thereof, repay, return, or deliver any distribution held by or transferred to the Holder to the applicable Wind-Down Debtor to the extent the Holder's total recovery on account of such Claim or Interest from the third party and under the Plan exceeds the amount of such Claim or Interest as of the date of any such distribution under the Plan. The failure of such Holder to timely repay, return, or deliver such distribution shall result in the Holder owing the applicable Wind-Down Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the ten-Business Day grace period specified above until the amount is repaid.

### **2. Claims Payable by Third Parties**

No distributions under the Plan shall be made on account of an Allowed Claim or Interest that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim or Interest has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim or Interest (if and to the extent adjudicated by a court of competent jurisdiction or otherwise settled), then immediately upon such payment, such Claim or Interest may be expunged or reduced on the Claims Register by the Claims, Noticing, and Solicitation Agent to the extent of any such payment without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

### **3. Applicability of Insurance Policies**

Except as otherwise provided herein, payments to Holders of Claims or Interests shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any rights, defenses, or Cause of Action that the Debtors, the Wind-Down Entity or any other Entity may hold against any other Entity, including insurers, under any policies of insurance, agreements related thereto, or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers under the applicable insurance policies, agreements related thereto, and applicable non-bankruptcy law.

## **G. Setoffs and Recoupment**

Except as otherwise expressly provided for herein, each Debtor, Wind-Down Debtor, the Wind-Down Entity, or such Entity's designee as instructed by such Debtor, Wind-Down Entity, as applicable, may, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code),



applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, set off against or recoup from an Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature whatsoever that the Debtor, Wind-Down Debtor or Wind-Down Entity, as applicable, may have against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised, settled, or released on or prior to the Effective Date (whether pursuant to the Plan or otherwise). Notwithstanding the foregoing, except as expressly stated in Article VIII of this Plan, neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Debtors or the Wind-Down Entity of any such Claims, rights, or Causes of Action the Debtors or the Wind-Down Entity may possess against such Holder.

#### **H. Allocation between Principal and Accrued Interest**

Except as otherwise provided herein, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof and as determined for federal income tax purposes) and second, to the extent the consideration exceeds the principal amount of the Allowed Claims, to the remaining portion of such Allowed Claim if any.

### **ARTICLE VII.**

#### **PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS AND INTERESTS**

##### **A. Disputed Claims Process**

After the Effective Date, the Wind-Down Entity, and any party-in-interest, shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim or Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim or Interest. If a Holder of a Claim or Interest in Class disputes the amount of their Claim or Interest as listed in the Schedules, the Holder should notify the Debtors or the Wind-Down Entity of such dispute. If the Debtors and the Holder agree to an amended Claim amount prior to the Effective Date, the Debtors shall file amended Schedules prior to the Effective Date. If between the Confirmation Date and the Effective Date, the dispute cannot be consensually resolved, the Holder may seek (by letter to the Court) to have the claim or interest dispute resolved before the Bankruptcy Court (and, with the consent of the Debtors, before any other court or tribunal with jurisdiction over the parties). After the Effective Date, the creditor may seek to have the claim dispute resolved before the Bankruptcy Court or any other court or tribunal with jurisdiction over the parties.

Unless relating to a Claim or Interest expressly Allowed pursuant to the Plan, all Proofs of Claim filed in these Chapter 11 Cases shall be considered objected to and Disputed without further action by the Debtors. Upon the Effective Date, all Proofs of Claim filed against the Debtors, regardless of the time of filing, and including Proofs of Claim filed after the Effective Date, shall be deemed withdrawn and expunged, other than as provided below. Notwithstanding anything in this Plan to the contrary: (1) all Claims against the Debtors that result from the Debtors' rejection of an Executory Contract or Unexpired Lease; (2) Claims filed to dispute the amount of any proposed Cure pursuant to section 365 of the Bankruptcy Code; and (3) Claims that the Debtors seek to have determined by the Bankruptcy Court, shall

in all cases be determined by the Bankruptcy Court, if not otherwise resolved through settlement with the applicable claimant.

Notwithstanding any provision herein to the contrary, nothing in the Disclosure Statement, Plan, or Confirmation Order grants the Bankruptcy Court with jurisdiction over any police and regulatory actions by the SEC, and the SEC shall retain the power and authority to commence and continue any such actions against any person or entity, including without limitation, the Debtors, in any forum with jurisdiction, provided, however, that enforcement of any money judgment against the Debtors must be in accordance with the Plan. In addition, the SEC may file any proof of claim by the Government Bar Date or such later date as ordered by the Bankruptcy Court and amend its proof of claim upon determination of liability on its claims. Any objection to such claim shall be in accordance with Bankruptcy Rule 3007, and such claim shall not automatically be deemed objected to, withdrawn, or expunged.

On the Effective Date, the Debtors or Wind-Down Trustee, as applicable, may establish one or more accounts or funds to hold and dispose of certain assets, pursue certain litigation (including the Causes of Action preserved under the Plan or otherwise vesting in the Wind-Down Trust), and/or satisfy certain Claims (including Claims that are contingent or have not yet been Allowed). For any such account or fund, the Debtors or the Wind-Down Trustee, as applicable, may take the position that grantor trust treatment applies in whole or in part. To the extent such treatment applies to any such account or fund, for all U.S. federal income tax purposes, the beneficiaries of any such account or fund would be treated as grantors and owners thereof, and it is intended, to the extent reasonably practicable, that any such account or fund would be classified as a liquidating trust under section 301.7701-4 of the Treasury Regulations. Alternatively, any such account or fund may be subject to the tax rules that apply to “disputed ownership funds” under 26 C.F.R. 1.468B-9. If such rules apply, such assets would be subject to entity-level taxation, and the Debtors and Wind-Down Trustee would be required to comply with the relevant rules.

## **B. Objections to Claims or Interests**

Except as otherwise specifically provided in the Plan, after the Effective Date, the Wind-Down Entity shall have the sole authority to: (1) File, withdraw, or litigate to judgment, any objections to Claims or Interests; and (2) settle or compromise any Disputed Claim or Interest without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, the Wind-Down Entity shall have and retain any and all rights and defenses each such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Article IV.P of the Plan.

Any objections to Claims or Interests shall be Filed on or before the Claims Objection Bar Date. For the avoidance of doubt, the Bankruptcy Court may extend the time period to object to Claims or Interests set forth in this paragraph at any time, including before or after the expiration of one hundred eighty days after the Effective Date, in its discretion or upon request by the Debtors or any party in interest.

## **C. Estimation of Claims**

Before or after the Effective Date, the Debtors or the Wind-Down Entity, as applicable, may (but are not required to), at any time, request that the Bankruptcy Court estimate any Disputed Claim or Interest that is contingent or unliquidated pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any party previously has objected to such Disputed Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under sections 157 and 1334 of the Judicial Code to estimate any such Disputed Claim or Interest, including during the litigation of any objection to any Disputed Claim or Interest or during the pendency of any appeal relating to such objection. Notwithstanding any provision

otherwise in the Plan, a Disputed Claim or Interest that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions) and may be used as evidence in any supplemental proceedings, and the Debtors or the Wind-Down Entity may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Disputed Claim or Interest that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen days after the date on which such Disputed Claim or Interest is estimated.

**D. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, if any portion of a Claim or Interest is a Disputed Claim or Interest, no payment or distribution provided hereunder shall be made on account of such Claim or Interest unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest; *provided* that if only a portion of a Claim or Interest is Disputed, such Claim or Interest shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account of such undisputed amount.

**E. Distributions After Allowance**

To the extent that a Disputed Claim or Interest ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim or Interest in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court Allowing any Disputed Claim or Interest becomes a Final Order, the Distribution Agent shall provide to the Holder of such Allowed Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Allowed Claim or Interest unless required under applicable bankruptcy law.

**F. No Interest**

Unless otherwise specifically provided for herein or by Final Order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims against the Debtors, and no Holder of a Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

**G. Adjustment to Claims and Interests without Objection**

Any Claim or Interest that has been paid, satisfied, amended, superseded, cancelled, or otherwise expunged (including pursuant to the Plan) may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Entity without the Wind-Down Entity having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court. Additionally, any Claim or Interest that is duplicative or redundant with another Claim or Interest against the same Debtor may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Entity without the Wind-Down Entity having to File an application, motion, complaint, objection, or any other legal proceeding

seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

#### **H. Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date.

#### **I. Disallowance of Claims or Interests**

Any Claims or Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors or the Wind-Down Entity, as applicable.

**Except as otherwise provided herein or as agreed to by the Debtors or the Wind-Down Entity, any and all Proofs of Claim Filed after the Bar Date shall be deemed disallowed and expunged as of the Effective Date without any further notice to, or action, order, or approval of, the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.**

#### **J. Amendments to Proofs of Claim**

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Proof of Claim or Proof of Interest may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Wind-Down Entity, and any such new or amended Proof of Claim or Proof of Interest Filed shall be deemed disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court.

### **ARTICLE VIII.**

#### **EFFECT OF CONFIRMATION OF THE PLAN**

##### **A. Releases by the Debtors**

**Notwithstanding anything contained in the Plan to the contrary, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Debtors, the Wind-Down Debtors, and their Estates, the Wind-Down Entity, and in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of, the foregoing Entities, from any and all Causes of Action, including any derivative claims, asserted or assertable on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, that the Debtors would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their**

capital structure, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Chapter 11 Cases and related adversary proceedings, the Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date; *provided that*, subject to the D&O Settlement, nothing in this Article VIII.A shall be construed to release the Released Parties from actual fraud, willful misconduct, or gross negligence as determined by a Final Order.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, of the releases described in this Article VIII.A by the Debtors, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.A is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to the extent contemplated by Article IV.E and Article IV.F of the Plan, a bar to any of the Debtors or Wind-Down Debtors or their respective Estates or Wind-Down Entity asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

Notwithstanding anything to the contrary contained herein, nothing in this Plan shall release, waive, or otherwise limit the (i) rights, duties, or obligations of the Purchaser under the Asset Purchase Agreement or the Definitive Documents and (ii) the Non-Released D&O Claims, but such Non-Released D&O Claims shall remain subject to the limitations contained in Article IV.E and Article IV.F of this Plan.

#### **B. Releases by Holders of Claims and Interests**

Except as expressly set forth in the Plan, effective on the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action, from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of any of the Debtors, that such Entity would have been legally entitled to assert in its own right (whether individually or collectively or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor,



the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions, or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date, *provided* that nothing in this Article VIII.B shall be construed to release the Released Parties from actual fraud, willful misconduct, or gross negligence as determined by a Final Order.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Article VIII.B, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.B is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to the extent contemplated by Article IV.F and Article IV.G of the Plan, a bar to any of the Releasing Parties or the Debtors or Wind-Down Debtors or their respective Estates or Wind-Down Entity asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

#### C. Exculpation

Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor release or the third-party release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is exculpated from any Cause of Action for any act or omission arising on or after the Petition Date and prior to the Effective Date based on the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation or filing, or consummation of the Disclosure Statement, the Plan, the Special Committee Investigation, any Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), except for Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan



**D. Injunction**

The assets of the Debtors and of the Wind-Down Entity shall be used for the satisfaction of expense obligations and the payment of Claims and Interests only in the manner set forth in this Plan and shall not be available for any other purpose. All Persons and Entities who have held, hold, or may hold Claims or Interests based upon any act, omission, transaction, or other activity of any kind or nature related to the Debtors, the Wind-Down Entity, or the Debtors' Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in the Plan or the Confirmation Order, shall be precluded and permanently enjoined on and after the Effective Date from interfering with the use and distribution of the Debtors' assets in the manner contemplated by the Plan.

In addition, as of the Effective Date and subject to the occurrence of the Effective Date, except as otherwise specifically provided in this Plan or the Confirmation Order, all Persons and Entities who have held, hold, or may hold Claims or Interests that are fully satisfied pursuant to the Plan or any Claim or Interest that is subject to the releases and exculpations set forth in Article VIII.B and Article VIII.C of this Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims or Interests, except for the receipt of the payments or distributions that are contemplated by this Plan.

**E. Release of Liens**

Except as otherwise provided in the Plan, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan or Confirmation Order on the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or Wind-Down Debtor, as applicable, and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as requested by the Debtors or Wind-Down Entity to evidence the release of such Lien, including the execution, delivery, and filing or recording of such documents evidencing such releases. The presentation or filing of the Confirmation Order to or with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

**F. OSC and SEC**

Notwithstanding any language to the contrary herein, no provision shall (a) preclude the OSC or the SEC from enforcing its police or regulatory powers; or (b) enjoin, limit, impair or delay the OSC or SEC from commencing or continuing any claims, causes of action, proceeding, or investigations against any non-Debtor person or non-Debtor entity in any forum.

**G. Protection against Discriminatory Treatment**

As provided by section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Entity, including Governmental Units, shall discriminate against any Wind-Down Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, any

Wind-Down Debtor, or any Entity with which a Wind-Down Debtor has been or is associated, solely because such Wind-Down Debtor was a debtor under chapter 11 of the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

#### **H. Document Retention**

Upon the occurrence of the Effective Date, the Debtors' books and records shall be transferred to the Wind-Down Entity, which shall continue to preserve all financial books and records, emails, and other financial documents relating to the Debtors' business that are currently in the Debtors' possession. The Wind-Down Trust shall not destroy or otherwise abandon any such documents or records without providing advance notice to the U.S. Securities and Exchange Commission (c/o Therese Scheuer, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, ScheuerT@SEC.GOV) and seeking further authorization from this Court. Nothing in this Plan or the Confirmation Order shall affect the obligations of the pre-Effective Date Debtors, the Wind-Down Entity, and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

#### **I. Reimbursement or Contribution**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

#### **J. Term of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code, or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. **All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.**

### **ARTICLE IX.**

#### **CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

##### **A. Conditions Precedent to the Effective Date**

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Article IX.B of the Plan:

1. The Bankruptcy Court shall have entered the Confirmation Order, which shall be in a form and substance reasonably satisfactory to the Debtors and the Committee, and subject to the consent rights of Purchaser under the Asset Purchase Agreement, and such order shall be a Final Order and in full force and effect.

2. The Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan, Definitive Documents, and the Asset Purchase Agreement.
3. Each Definitive Document and each other document contained in any supplement to the Plan, including the Plan Supplement and any exhibits, schedules, amendments, modifications or supplements thereto or other documents contained therein, shall have been executed or Filed, as applicable, in form and substance consistent in all respects with the Plan, and subject to the Purchaser's consent rights under the Asset Purchase Agreement, and shall not have been modified in a manner inconsistent therewith;
4. The Professional Fee Escrow Account shall have been established and funded with Cash in accordance with Article II.B.2 of the Plan.
5. The Wind-Down Reserve shall have been established and funded with Cash in accordance with the Plan.
6. If prior to the Outside Date, the Asset Purchase Agreement shall be in full force and effect and the Sale Transaction shall have been consummated.
7. The Restructuring Transactions shall have been consummated or shall be anticipated to be consummated concurrently with the occurrence of the Effective Date in a manner consistent with the Plan, the Customer Onboarding Protocol, the other Definitive Documents, and the Asset Purchase Agreement, and the Plan shall have been substantially consummated or shall be anticipated to be substantially consummated concurrently with the occurrence of the Effective Date.

#### **B. Waiver of Conditions Precedent**

The Debtors, with the consent of the Committee and, solely to the extent related to the Asset Purchase Agreement and the Sale Transaction, prior to the Outside Date, the consent of Purchaser, may waive any of the conditions to the Effective Date set forth in Article IX.A of the Plan at any time, without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan.

#### **C. Effect of Non-Occurrence of Conditions to Consummation**

If the Effective Date does not occur within 120 days after the Confirmation Date, then the Plan will be null and void in all respects, any and all compromises or settlements not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including with respect to the fixing, limiting, or treatment of any Claim or Interest, including, without limitation, the Alameda Loan Facility Claims), shall be deemed null and void, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims, Interests, or Causes of Action held by any Debtor or any other Entity; (2) prejudice in any manner the rights of any Debtor or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity in any respect.

## **ARTICLE X.**

### **MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

#### **A. Modification of Plan**

Subject to the limitations and terms contained in the Plan and Purchaser's consent rights under the Asset Purchase Agreement, the Debtors, with the consent of the Committee, reserve the right to (1) amend or modify the Plan before the entry of the Confirmation Order, in accordance with the Bankruptcy Code and the Bankruptcy Rules and (2) after the entry of the Confirmation Order, the Debtors or the Wind-Down Entity, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein.

#### **B. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall constitute approval of all modifications or amendments to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

#### **C. Revocation or Withdrawal of Plan**

The Debtors reserve the right, with the consent of the Committee, to revoke or withdraw the Plan with respect to any or all Debtors before the Confirmation Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (1) the Plan will be null and void in all respects; (2) any settlement or compromise not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Classes of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effectuated by the Plan, and any document or agreement executed pursuant to the Plan will be null and void in all respects; and (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity, (b) prejudice in any manner the rights of any Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

## **ARTICLE XI.**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Claims or other Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed or assumed and assigned; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;

4. ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor or the Estates that may be pending on the Effective Date;

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, and other agreements or documents created in connection with the Plan; *provided* that the Bankruptcy Court shall not retain jurisdiction over disputes concerning documents contained in the Plan Supplement that have a jurisdictional, forum selection, or dispute resolution clause that refers disputes to a different court;

7. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or an Interest for amounts not timely repaid pursuant to Article VI of the Plan; (b) with respect to the releases, injunctions, and other provisions contained in Article VIII of the Plan, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) anything that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan and the Confirmation Order; or (d) related to section 1141 of the Bankruptcy Code;

11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

13. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

14. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases with respect to any Entity, and resolve any cases, controversies, suits, or disputes that may arise in connection with any Entity's rights arising from or obligations incurred in connection with the Plan;

15. hear and determine matters concerning local, state, federal, and foreign taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

16. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

17. enforce all orders previously entered by the Bankruptcy Court; and

18. hear and determine any other matters related to the Chapter 11 Cases and not inconsistent with the Bankruptcy Code or the Judicial Code.

Nothing herein limits the jurisdiction of the Bankruptcy Court to interpret and enforce the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, or the Disclosure Statement, without regard to whether the controversy with respect to which such interpretation or enforcement relates may be pending in any state or other federal court of competent jurisdiction.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article XI, the provisions of this Article XI shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

Unless otherwise specifically provided herein or in a prior order of the Bankruptcy Court, the Bankruptcy Court shall have exclusive jurisdiction to hear and determine disputes concerning Claims against or Interests in the Debtors that arose prior to the Effective Date.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Entity, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, exculpations, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be



as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or Interest has voted on the Plan.

**B. Additional Documents**

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Wind-Down Entity, and all Holders of Claims and Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

**C. Payment of Statutory Fees**

All fees and applicable interest payable pursuant to section 1930 of the Judicial Code and 31 U.S.C. § 3717, as applicable, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by each of the Wind-Down Debtors (or the Distribution Agent on behalf of the Wind-Down Entity) for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first.

**D. Dissolution of Statutory Committees**

On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases; *provided*, however, that such committees will remain in existence for the limited purposes of (a) pursuing, supporting, or otherwise participating in, any outstanding appeals in the Chapter 11 Cases; and (b) filing, objecting, or otherwise participating in, any final fee applications of Professionals.

**E. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests, unless and until the Effective Date has occurred.

**F. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of each such Entity.

**G. Service of Documents**

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Wind-Down Debtors shall be served on:

Wind-Down Debtors

**Voyager Digital Holdings, Inc.**

33 Irving Place  
New York, New York 10003  
Attention: David Brosgol  
General Counsel,  
E-mail address: dbrosgol@investvoyager.com

with copies for information only (which shall not constitute notice) to:

Counsel to the Debtors

**Kirkland & Ellis LLP**

**Kirkland & Ellis International LLP**

601 Lexington Avenue  
New York, New York 10022  
Attention: Joshua A. Sussberg, P.C., Christopher Marcus,  
P.C., Christine A. Okike, P.C., and Allyson B. Smith

Counsel to the Committee

**McDermott Will & Emery LLP**

One Vanderbilt Avenue  
New York, New York 10017  
Attention: Darren Azman

**H. Entire Agreement; Controlling Document**

Except as otherwise indicated, on the Effective Date, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations with respect to the subject matter of the Plan, all of which will have become merged and integrated into the Plan; *provided, however*, that notwithstanding the foregoing or anything to the contrary herein, to the extent there is any conflict between the Plan and the Confirmation Order, on the one hand, and the Asset Purchase Agreement, on the other hand, the Asset Purchase Agreement shall govern solely in the event the Sale Transaction is consummated. Except as set forth in the Plan, in the event that any provision of the Disclosure Statement, the Plan Supplement, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

**I. Plan Supplement**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Claims, Noticing, and Solicitation Agent at <https://cases.stretto.com/Voyager> or the Bankruptcy Court's website at <http://www.nysb.uscourts.gov>. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

**J. Non-Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, subject to the Purchaser's consent rights under the Asset Purchase Agreement prior to the Outside Date, shall have the power to alter and interpret such term or provision to make it valid or enforceable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' consent, consistent with the terms set forth herein; and (3) non-severable and mutually dependent.

**K. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors, and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties nor individuals or the Wind-Down Debtors will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan or any previous plan.

**L. Waiver or Estoppel**

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed prior to the Confirmation Date.

Dated: December 21, 2022

VOYAGER DIGITAL HOLDINGS, INC.  
on behalf of itself and all other Debtors

/s/ Stephen Ehrlich

Stephen Ehrlich  
Co-Founder and Chief Executive Officer  
Voyager Digital Holdings, Inc.

**Exhibit B**

**Redline**

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC. <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
Debtors.	)	(Jointly Administered)

**SECONDTHIRD AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND  
 ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Joshua A. Sussberg, P.C.  
 Christopher Marcus, P.C.  
 Christine A. Okike, P.C.  
 Allyson B. Smith (admitted *pro hac vice*)  
 KIRKLAND & ELLIS LLP  
 KIRKLAND & ELLIS INTERNATIONAL LLP  
 601 Lexington Avenue  
 New York, New York 10022  
 Telephone: (212) 446-4800  
 Facsimile: (212) 446-4900

**NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE,  
 COMMITMENT, OR LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY  
 OTHER PARTY IN INTEREST, AND THIS PLAN IS SUBJECT TO APPROVAL BY THE  
 BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS. THIS PLAN IS NOT AN  
 OFFER WITH RESPECT TO ANY SECURITIES.**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, LTD. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.



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## **INTRODUCTION**

Voyager Digital Holdings, Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (each a “Debtor” and, collectively, the “Debtors”) propose this ~~second~~<sup>third</sup> amended joint plan (the “Plan”) for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings set forth in Article I.A of the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, properties and operations, projections, risk factors, a summary and analysis of this Plan, and certain related matters.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **ARTICLE I.**

### **DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES**

#### **A. Defined Terms**

Capitalized terms used in this Plan have the meanings ascribed to them below.

1. “3AC” means Three Arrows Capital, Ltd and any of its Affiliates or subsidiaries.
2. “3AC Claims” means the claims or causes of action asserted or assertable by the Debtors against 3AC, whether in the 3AC Liquidation Proceeding or otherwise.
3. “3AC Liquidation Proceeding” means that certain liquidation proceeding captioned *In the Matter of Three Arrows Capital Ltd. and in the Matter of Sections 159(1) and 162(1)(a) and (b) of the Insolvency Act 2003*, Claim No. BVIHC(COM)2022/0119 before the Eastern Caribbean Supreme Court in the High Court of Justice in the British Virgin Islands and the chapter 15 foreign recognition proceeding captioned *In re Three Arrows Capital, Ltd.*, No. 22-10920 (Bankr. S.D.N.Y. Jul. 1, 2022).
4. “3AC Loan” means that loan of 15,250 Bitcoins and 350 million USDC to 3AC pursuant to that certain master loan agreement dated March 4, 2022 by and between 3AC, as borrower, and OpCo and HTC Trading, Inc., as lenders.
5. “3AC Recovery” means the recovery, if any, of the Debtors from 3AC on account of the 3AC Claims.
6. “Account” means any account at OpCo held by an Account Holder relating to Cryptocurrency, which Account is identified in the Debtors’ books and records as holding Cryptocurrency as of the Petition Date.

7. “*Account Holder*” means any Person or Entity who holds an Account with OpCo as of the Petition Date.

8. “*Account Holder Claim*” means any Claim against the Debtors that is held by an Account Holder on account of such Holder’s Account.

9. “*Acquired Assets*” has the meaning ascribed to it in the Asset Purchase Agreement.

10. “*Acquired Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

11. “*Acquired Coins Value*” has the meaning ascribed to it in the Asset Purchase Agreement.

12. “*Additional Bankruptcy Distribution*” has the meaning ascribed to it in the Asset Purchase Agreement.

13. ~~10-~~ “*Administrative Claim*” means a Claim against a Debtor for the costs and expenses of administration of the Chapter 11 Cases arising on or after the Petition Date and prior to the Effective Date pursuant to section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors’ business and (b) Allowed Professional Fee Claims.

14. ~~11-~~ “*Administrative Claims Bar Date*” means the deadline for Filing requests for payment of Administrative Claims (other than requests for payment of Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), which: (a) with respect to Administrative Claims other than Professional Fee Claims, shall be thirty days after the Effective Date; and (b) with respect to Professional Fee Claims, shall be forty-five days after the Effective Date.

15. ~~12-~~ “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code. With respect to any Person that is not a Debtor, the term “Affiliate” shall apply to such Person as if the Person were a Debtor.

16. ~~13-~~ “*Alameda*” means Alameda Ventures Ltd., along with its Affiliates and subsidiaries.

17. “*Alameda Claims*” means the claims or causes of action asserted or assertable by the Debtors against Alameda, whether in the FTX Bankruptcy Proceeding or otherwise.

18. ~~14-~~ “*Alameda Loan Agreement*” means that certain unsecured loan agreement, dated as of June 21, 2022, as amended, restated, amended and restated, modified, or supplemented from time to time, by and among Voyager Digital Holdings, Inc., as the borrower, Voyager, as the guarantor, and Alameda, as the lender thereto.

19. ~~15-~~ “*Alameda Loan Facility*” means that certain unsecured loan facility provided for under the Alameda Loan Agreement.

20. ~~16-~~ “*Alameda Loan Facility Claims*” means any Claim against any Debtor derived from, based upon, or arising under the Alameda Loan Agreement and any fees, costs, and expenses that are reimbursable by any Debtor pursuant to the Alameda Loan Agreement.

21. “*Alameda Recovery*” means the recovery, if any, of the Debtors from Alameda on account of the Alameda Claims.

22. ~~17.~~ “Allowed” means, with respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim or Interest that is evidenced by a Proof of Claim timely Filed by the Bar Date or a request for payment of Administrative Claim timely Filed by the Administrative Claims Bar Date (or for which Claim or Interest under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court a Proof of Claim or a request for payment of Administrative Claim is not or shall not be required to be Filed); (b) a Claim or Interest that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; (c) a Claim or Interest Allowed pursuant to the Plan, any stipulation approved by the Bankruptcy Court, any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or a Final Order of the Bankruptcy Court, or (d) a Claim or Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court; *provided* that, with respect to a Claim or Interest described in clauses (a) and (b) above, such Claim or Interest shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or if such an objection is so interposed, such Claim or Interest shall have been Allowed by a Final Order. Any Claim or Interest that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes. A Proof of Claim Filed after and subject to the Bar Date or a request for payment of an Administrative Claim Filed after and subject to the Administrative Claims Bar Date, as applicable, shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. “Allow” and “Allowing” shall have correlative meanings.

~~18. “Acquired Cash” means any Cash acquired pursuant to the Asset Purchase Agreement.~~

23. ~~19.~~ “Asset Purchase Agreement” means that certain asset purchase agreement dated as of ~~September 27~~<sup>SD</sup>~~18,~~<sup>Sept</sup> 2022 by and between ~~West Realm Shires~~<sup>BAM Trading Services</sup> Inc. (d/b/a Binance.US) as Purchaser and Voyager Digital, LLC as Seller ~~(and as amended from time to time in accordance with the terms thereof).~~

24. ~~20.~~ “Assumed Liabilities” has the meaning ascribed to it in the Asset Purchase Agreement.

25. ~~21.~~ “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as now in effect or hereafter amended.

26. ~~22.~~ “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York, or any other court having jurisdiction over the Chapter 11 Cases, including to the extent of the withdrawal of reference under section 157 of the Judicial Code, the United States District Court for the Southern District of New York.

27. ~~23.~~ “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated by the United States Supreme Court under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

28. ~~24.~~ “Bar Date” means the applicable deadline by which Proofs of Claim must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.



29. ~~25.~~ “*Bar Date Order*” means the *Order (I) Setting Deadlines for Submitting Proofs of Claims, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof* [Docket No. 218].

30. “*Binance.US Platform*” has the meaning ascribed to it in the Asset Purchase Agreement.

31. “*Binance US*” means BAM Trading Services Inc. (d/b/a Binance.US).

32. “*Binance US Account*” means a customer account opened with the Purchaser by an Account Holder or a Holder of an Allowed OpCo General Unsecured Claim.

33. ~~26.~~ “*Business Day*” means any day, other than a Saturday, Sunday, or a “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

34. ~~27.~~ “*Cash*” or “\$” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

35. ~~28.~~ “*Causes of Action*” mean any action, Claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, Lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise. For the avoidance of doubt, “*Causes of Action*” includes: (a) any right of setoff, counterclaim, or recoupment and any claim arising from any contract or for breach of duties imposed by law or in equity; (b) any claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, violation of local, state, federal, or foreign law, or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any right to object to or otherwise contest Claims or Interests; (d) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (e) any claim or defense, including fraud, mistake, duress, usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

36. ~~29.~~ “*CCO*” means Evan Psaropoulos.

37. ~~30.~~ “*CEO*” means Stephen Ehrlich.

38. ~~31.~~ “*Certificate*” means any instrument evidencing a Claim or an Interest.

39. ~~32.~~ “*Chapter 11 Cases*” means (a) when used with reference to a particular Debtor, the case pending for that Debtor in the Bankruptcy Court under chapter 11 of the Bankruptcy Code and (b) when used with reference to all Debtors, the procedurally consolidated cases filed for the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.

40. ~~33.~~ “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.

41. ~~34.~~ “*Claims Objection Bar Date*” means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) (i) with respect to Administrative Claims (other than Professional Fee Claims and Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), sixty days after the Administrative Claims Bar Date or (ii) with respect to all other Claims (other than Professional Fee Claims), 180 days after the Effective Date and (b) such other period of limitation

as may be specifically fixed by the Debtors or the Wind-Down Trust, as applicable, as approved by an order of the Bankruptcy Court for objecting to such Claims.

42. ~~35.~~ “*Claims Register*” means the official register of Claims against and Interests in the Debtors maintained by the Clerk of the Bankruptcy Court or the Claims, Noticing, and Solicitation Agent.

43. ~~36.~~ “*Claims, Noticing, and Solicitation Agent*” means Bankruptcy Management Solutions, Inc. d/b/a Stretto, in its capacity as the claims, noticing, and solicitation agent in the Chapter 11 Cases for the Debtors and any successors appointed by an order of the Bankruptcy Court.

44. ~~37.~~ “*Class*” means a class of Claims against or Interests in the Debtors as set forth in Article III of the Plan in accordance with section 1122(a) of the Bankruptcy Code.

45. ~~38.~~ “*Committee*” means the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases.

46. ~~39.~~ “*Confirmation*” means the Bankruptcy Court’s entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

47. ~~40.~~ “*Confirmation Date*” means the date on which Confirmation occurs.

48. ~~41.~~ “*Confirmation Hearing*” means the hearing before the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code at which the Debtors will seek Confirmation of the Plan.

49. ~~42.~~ “*Confirmation Order*” ~~means the Bankruptcy Court’s order confirming the Plan pursuant to section 1129 of the Bankruptcy Code~~ has the meaning ascribed to it in the Asset Purchase Agreement.

50. ~~43.~~ “*Consummation*” means the occurrence of the Effective Date.

51. ~~44.~~ “*Contributed Third-Party Claims*” means all direct Causes of Action that any Contributing Claimant has against any Person (other than a Debtor) that had a direct relationship with the Debtors, their predecessors, or respective affiliates and that harmed such Contributing Claimant in the claimant’s capacity as a creditor of Voyager, including (a) all Causes of Action based on, arising out of, or related to the marketing, sale, and issuance of Cryptocurrency that at any point was held or offered on Voyager’s platform; (b) all Causes of Action based on, arising out of, or related to the alleged misrepresentation of any of the Debtors’ financial information, business operations, or related internal controls; and (c) all Causes of Action based on, arising out of, or related to any alleged failure to disclose, or actual or attempted cover up or obfuscation of, any of the Debtors’ conduct prior to the Petition Date; *provided, however*, that Contributed Third-Party Claims do not include (i) any derivative claims of the Debtors; (ii) any direct claims against the Released Parties; (iii) any direct Causes of Action that any Contributing Claimant has against Mark Cuban, Dallas Basketball Limited d/b/a Dallas Mavericks, the National Basketball Association, and any of their Related Parties; or (iv) any direct Causes of Action that any Contributing Claimant, in its capacity as an equity holder of Voyager Digital Ltd., has that are asserted in the currently filed complaint, dated as of July 6, 2022, in the Ontario Superior Court of Justice by Francine De Sousa, against Voyager Digital Ltd., Stephen Ehrlich, Philip Eytan, Evan Psaropoulos, Lewis Bateman, Krisztian Toth, Jennifer Ackart, Glenn Stevens, and Brian Brooks.

52. ~~45.~~ “Contributing Claimants” means any Holders of Claims or Interests that elect on their ballots or opt-in forms to contribute their Contributed Third-Party Claims to the Wind-Down Entity.

53. ~~46.~~ “Cryptocurrency” means a digital currency or crypto asset in which transactions are verified and records maintained by a decentralized system using cryptography, rather than by a centralized authority, including stablecoins, digital coins and tokens, such as security tokens, utility tokens and governance tokens.

54. ~~47.~~ “Cure” or “Cure Claim” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s default under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

55. ~~48.~~ “Customer Migration Onboarding Protocol” means ~~a protocol prepared by Purchaser for the migration of Transferred Creditors to Purchaser’s platform pursuant to the Plan that is consistent with the terms of the Asset Purchase Agreement and otherwise mutually acceptable to OpCo and the Purchaser, and~~ the protocol describing the process of onboarding Account Holders and Holders of OpCo General Unsecured Claims onto the Binance.US Platform, the form of which shall be included in the Plan Supplement and filed no later than by February 3, 2023, and which shall be in a form acceptable to the Purchaser.

56. ~~49.~~ “D&O Carriers” means the insurance carriers of the D&O Liability Insurance Policies.

57. ~~50.~~ “D&O Liability Insurance Policies” means all unexpired insurance policies maintained by the Debtors, the Wind-Down Debtors, or the Estates as of the Effective Date that have been issued (or provide coverage) regarding directors’, managers’, officers’, members’, and trustees’ liability (including any “tail policy”), including but not limited to the Management Liability Policy, the Excess Policies, and the Side-A Policy, and all agreements, documents, or instruments relating thereto.

58. ~~51.~~ “D&O Settlement” means the settlement between the Debtors and CEO and CCO as set forth in Article IV.FG of the Plan.

59. ~~52.~~ “Debtors” means, collectively, each of the following: Voyager Digital Holdings, Inc.; Voyager Digital Ltd.; and Voyager Digital, LLC.

60. ~~53.~~ “Definitive Documents” means: (a) the Plan (and any and all exhibits, annexes, and schedules thereto); (b) the Confirmation Order; (c) the Disclosure Statement and the other Solicitation Materials; (d) the Disclosure Statement Order; (e) all pleadings filed by the Debtors in connection with the Chapter 11 Cases (or related orders); (f) the Plan Supplement; (g) the Management Transition Plan; (h) any new material employment, consulting, or similar agreements entered into between the Wind-Down Trust and any of the Debtors’ employees, if any; ~~and~~ (i) the Asset Purchase Agreement; (j) the Customer Onboarding Protocol; and (k) any and all other deeds, agreements, filings, notifications, pleadings, orders, certificates, letters, instruments or other documents reasonably desired or necessary to consummate and document the transactions contemplated by the Restructuring Transactions (including any exhibits, amendments, modifications, or supplements made from time to time thereto).

61. ~~54.~~ “Disclosure Statement” means the ~~Amended Disclosure Statement Relating to the Second~~ Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to

Chapter 11 of the Bankruptcy Code, as may be amended, supplemented, or otherwise modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan.

62. ~~55.~~ “Disclosure Statement Order” means the order entered by the Bankruptcy Court approving the Disclosure Statement.

63. ~~56.~~ “Disputed” means a Claim or an Interest or any portion thereof: (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order; and (c) with respect to which a party in interest has Filed a Proof of Claim, a Proof of Interest, or otherwise made a written request to a Debtor for payment.

64. ~~57.~~ “Disputed Claims Reserve” means an appropriate reserve in an amount to be determined by the Wind-Down Trust for distributions on account of Disputed Claims that are subsequently Allowed after the Effective Date, in accordance with Article VII.D hereof.

65. “Distributable Cryptocurrency” means all Cryptocurrency held on the Voyager platform or that is otherwise property of any Debtor on the Effective Date after payment in full of, or reserve for, all Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims.

66. ~~58.~~ “Distributable HoldCo Cash” means HoldCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at HoldCo in full; and (y) to fund HoldCo’s Pro Rata share of the Wind-Down Reserve.

67. ~~59.~~ “Distributable OpCo Cash” means OpCo’s Cash, including the Purchase Price Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at OpCo in full; and (y) to fund OpCo’s Pro Rata share of the Wind-Down Reserve.

68. ~~60.~~ “Distributable TopCo Cash” means TopCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at TopCo in full; and (y) to fund TopCo’s Pro Rata share of the Wind-Down Reserve.

69. ~~61.~~ “Distribution Agent” means, as applicable, the Purchaser, Wind-Down Debtors, ~~Wind-Down~~ Wind-Down Trust or any Entity or Entities designated by the Purchaser, Wind-Down Debtors, or the ~~Wind-Down~~ Wind-Down Trust (as applicable) to make or to facilitate distributions that are to be made pursuant to the Plan; ~~provided that, for the avoidance of doubt, Purchaser shall be the Distribution Agent solely for distributions made to Transferred Creditors pursuant to the Customer Migration Protocol.~~ Definitive Documents, and Asset Purchase Agreement.

70. ~~62.~~ “Distribution Date” means, except as otherwise set forth herein, the date or dates determined by the Wind-Down Trust, on or after the Effective Date, upon which the Distribution Agent shall make distributions to Holders of Allowed Claims entitled to receive distributions under the Plan.

71. ~~63.~~ “Distribution Record Date” means the record date for purposes of determining which Holders of Allowed Claims and Interests against the Debtors are eligible to receive distributions under the Plan, which date shall be the Effective Date, or such other date as is determined by the Debtors or designated by an order of the Bankruptcy Court.

72. ~~64.~~ “Effective Date” means the date that is the first Business Day after the Confirmation Date on which (a) all conditions precedent to the occurrence of the Effective Date set forth in

Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan, (b) no stay of the Confirmation Order is in effect, and (c) the Debtors declare the Plan effective.

73. ~~65.~~ “Entity” has the meaning set forth in section 101(15) of the Bankruptcy Code.

74. ~~66.~~ “Estate” means, as to each Debtor, the estate created on the Petition Date for the Debtor in its Chapter 11 Case pursuant to sections 301 and 541 of the Bankruptcy Code and all property (as defined in section 541 of the Bankruptcy Code) acquired by the Debtor after the Petition Date through and including the Effective Date.

75. ~~67.~~ “Excess Policies” means, collectively, the Excess Insurance Policy, No. EFI1203041-01, issued by Euclid Financial on behalf of Certain Underwriters of Lloyd’s, London, the Excess Insurance Policy, No. RILED0A3392022, issued by Relm Insurance Ltd., both for the February 22, 2022 to February 22, 2023 period, and the Excess Policy, No. ELU184180-23, issued by XL Specialty Insurance Company, for the February 22, 2022 to July 1, 2023 period.

76. ~~68.~~ “Exculpated Parties” means, collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) the Committee, and each of the members thereof, solely in their capacity as such; (c) each of the Released Professionals; ~~and~~ (d) each of the Released Voyager Employees; and (e) the Distribution Agent.

77. ~~69.~~ “Executory Contract” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

78. ~~70.~~ “Existing Equity Interests” means any Interest in TopCo existing immediately prior to the occurrence of the Effective Date.

79. “Extended Outside Date” has the meaning set forth in the Asset Purchase Agreement.

80. ~~71.~~ “Federal Judgment Rate” means the federal judgment interest rate in effect as of the Petition Date calculated as set forth in section 1961 of the Judicial Code.

81. ~~72.~~ “File,” “Filed,” or “Filing” means file, filed, or filing, respectively, in the Chapter 11 Cases with the Bankruptcy Court or its authorized designee, or, with respect to the filing of a Proof of Claim or Proof of Interest, file, filed, or filing, respectively, with the Claims, Noticing, and Solicitation Agent.

82. ~~73.~~ “Final Decree” means the decree contemplated under Bankruptcy Rule 3022.

83. ~~74.~~ “Final Order” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, petition for certiorari, or move for a new trial, reargument, reconsideration, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, reargument, reconsideration, or rehearing has been timely taken or filed, or as to which any appeal that has been or may be taken or any petition for certiorari or any motion for a new trial, reargument, reconsideration, or rehearing that has been or may be made or filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the motion for a new trial, reargument, reconsideration, or rehearing shall have been denied, resulted in no modification of such order (if any such motion has been or may be granted), or have otherwise been dismissed with prejudice; *provided* that the possibility that a motion under rule 60 of



the Federal Rules of Civil Procedure or any comparable Bankruptcy Rule may be filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

84. [“FTX” means FTX Trading, Ltd. and any of its Affiliates or subsidiaries, including West Realm Shires Inc \(d/b/a “FTX.US”\).](#)

85. [“FTX Bankruptcy Proceeding” means that certain chapter 11 proceeding captioned \*In re FTX Trading Ltd.\*, Case No. 22-11068 \(JTD\) \(Bankr. D. Del. Nov. 11, 2022\).](#)

86. [“FTX Claims” means the claims or causes of action asserted or assertable by the Debtors against FTX, whether in the FTX Bankruptcy Proceeding or otherwise.](#)

87. ~~75.~~ [“FTX US Account” means a customer account opened by an Account Holder or a Holder of an Allowed OpCo General Unsecured of the FTX Claims with Purchaser.](#) [“Recovery” means the recovery, if any, of the Debtors from FTX on](#)

88. ~~76.~~ [“General Unsecured Claim” means, collectively, any HoldCo General Unsecured Claim, OpCo General Unsecured Claim, or TopCo General Unsecured Claim.](#)

89. ~~77.~~ [“Governmental Unit” has the meaning set forth in section 101\(27\) of the Bankruptcy Code.](#)

90. [“Government Bar Date” means the applicable deadline by which Proofs of Claim by a Governmental Unit must be Filed, as established by: \(a\) the Bar Date Order; \(b\) a Final Order of the Bankruptcy Court; or \(c\) the Plan.](#)

91. ~~78.~~ [“HoldCo” means Voyager Digital Holdings, Inc.](#)

92. ~~79.~~ [“HoldCo General Unsecured Claim” means any Claim against HoldCo that is not Secured and is not: \(a\) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; \(b\) an Administrative Claim; \(c\) a Secured Tax Claim; \(d\) a Priority Tax Claim; \(e\) an Other Priority Claim; \(f\) a Professional Fee Claim; \(g\) an Alameda Loan Facility Claim; or \(h\) an Intercompany Claim. For the avoidance of doubt, all \(i\) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and \(ii\) Claims that are not Secured resulting from litigation, against HoldCo are HoldCo General Unsecured Claims.](#)

93. ~~80.~~ [“Holder” means an Entity holding a Claim against or an Interest in any Debtor.](#)

94. ~~81.~~ [“Impaired” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.](#)

95. ~~82.~~ [“Insurance Policies” means any and all insurance policies entered into by the Debtors, including the D&O Insurance Policies.](#)

96. ~~83.~~ [“Intercompany Claim” means any Claim held by a Debtor or a Debtor’s Affiliate against a Debtor.](#)

97. ~~84.~~ [“Intercompany Interest” means, other than an Interest in Voyager, an Interest in one Debtor held by another Debtor or a Debtor’s Affiliate.](#)

98. ~~85.~~ [“Interest” means any equity security \(as such term is defined in section 101\(16\) of the Bankruptcy Code\) including all issued, unissued, authorized, or outstanding shares of capital stock](#)



and any other common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profit interests of an Entity, including all options, warrants, rights, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable, or exchangeable securities, or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in an Entity whether or not arising under or in connection with any employment agreement and whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security, and including any Claim against the Debtors subject to subordination pursuant to section 510(b) of the Bankruptcy Code arising from or related to the foregoing.

99. ~~86.~~ “*Interim Compensation Order*” means the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* [Docket No. 236].

100. ~~87.~~ “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001 and the rules and regulations promulgated thereunder, as applicable to the Chapter 11 Cases.

101. ~~88.~~ “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

102. “*Liquidation Procedures*” means, in the event the Sale Transaction is not consummated by the Outside Date, such procedures filed by the Wind-Down Entity identifying the mechanics and procedures to effectuate the Liquidation Transaction.

103. “*Liquidation Transaction*” means, in the event the Sale Transaction is not consummated by the Outside Date, the distribution of the Debtors’ Cryptocurrency, Cash and other assets pursuant to Article IV.D of this Plan.

104. ~~89.~~ “*Management Liability Policy*” means the Executive and Corporate Securities Liability Insurance Policy, No. ELU181214-22, issued by XL Specialty Insurance Company for the February 22, 2022 to February 22, 2023 period.

105. ~~90.~~ “*Management Transition Plan*” has the meaning set forth in Article IV.~~D~~E of the Plan, and which shall be in form and substance reasonably acceptable to the Committee.

106. “*Net Owed Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

107. ~~91.~~ “*Non-Released D&O Claims*” has the meaning set forth in Article IV.~~E~~F of the Plan.

108. ~~92.~~ “*Non-Released D&O Claim Budget*” means the amount allocated to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims, which amount shall be agreed upon between the Debtors and the Committee prior to the Confirmation Hearing.

109. ~~93.~~ “*Non-Released Insurance Claims*” has the meaning set forth in Article IV.~~E~~F of the Plan.

110. ~~94.~~ “*OpCo*” means Voyager Digital, LLC.

111. ~~95.~~ “*OpCo General Unsecured Claim*” means any Claim against OpCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Account Holder Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and

Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation against OpCo are OpCo General Unsecured Claims.

112. ~~96.~~ “OSC” means the Ontario Securities Commission.

113. ~~97.~~ “Other Priority Claim” means any Claim against a Debtor, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

114. “Outside Date” has the meaning set forth in the Asset Purchase Agreement. All references herein to the “Outside Date” shall be deemed to include the “Extended Outside Date” to the extent the Outside Date is extended in accordance with Section 8.1(c) of the Asset Purchase Agreement.

115. ~~98.~~ “Person” has the meaning set forth in section 101(41) of the Bankruptcy Code.

116. ~~99.~~ “Petition Date” means July 5, 2022.

117. ~~100.~~ “Plan” means this joint chapter 11 plan and all exhibits, supplements, appendices, and schedules hereto, as may be altered, amended, supplemented, or otherwise modified from time to time in accordance with Article X.A hereof, including the Plan Supplement (as altered, amended, supplemented, or otherwise modified from time to time), which is incorporated herein by reference and made part of the Plan as if set forth herein.

118. ~~101.~~ “Plan Supplement” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may thereafter be amended, supplemented, or otherwise modified from time to time in accordance with the terms of the Plan, the Bankruptcy Code, the Bankruptcy Rules, and applicable law), to be Filed by the Debtors no later than seven days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court, and additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement. The Plan Supplement may include the following, as applicable: (a) the Schedule of Assumed Executory Contracts and Unexpired Leases; (b) the Schedule of Retained Causes of Action; (c) the Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases; (d) the Customer ~~Migration~~ Onboarding Protocol; (e) the Restructuring Transactions Memorandum; (f) the Wind-Down Trust Agreement; and (g) any additional documents necessary to effectuate or that is contemplated by the Plan, including any compensation program for any of the Debtors’ employees to be established as contemplated in the Plan and the Definitive Documents to facilitate the transfer of Acquired Assets pursuant to the Asset Purchase Agreement and the wind-down of the Debtors’ Estates; *provided* that the ~~Customer Migration Protocol and the~~ Schedule of Retained Causes of Action shall be filed no later than 14 days before the Voting Deadline. The Plan Supplement (and the contents thereof) shall be (x) subject to Purchaser’s consent rights solely to the extent set forth under the Asset Purchase Agreement (and shall otherwise be consistent with the Asset Purchase Agreement) and (y) reasonably acceptable to the Committee.

119. ~~102.~~ “Priority Tax Claim” means any Claim of a Governmental Unit against a Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code.

120. ~~103.~~ “Pro Rata” means the proportion that (i) an Allowed Claim or an Allowed Interest in a particular Class bears to (ii) the aggregate amount of Allowed Claims or Allowed Interests in that Class ~~or the proportion of the~~ and, solely with respect to Claims in Classes 3 and 4(a), the proportion that an Allowed Claim in either such Class bears to the aggregate amount of Allowed Claims in Classes 3 and 4(a) in the aggregate, unless otherwise indicated. For purposes of calculating Pro Rata distributions if

the Sale Transaction is consummated by the Outside Date, the Pro Rata shares of all Holders of Allowed Claims or Allowed Interests in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim or Allowed Interests under the Plan, unless otherwise indicated, shall be calculated taking into account the Acquired Coins Value of the Net Owed Coins distributed to each of the Account Holders.

121. ~~104.~~ “Professional” means an Entity: (a) employed in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code or (b) for which compensation and reimbursement has been Allowed by Final Order of the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

122. ~~105.~~ “Professional Fee Claim” means any Administrative Claim by a Professional for compensation for services rendered or reimbursement of expenses incurred by such Professional through and including the Effective Date to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court. To the extent the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional’s requested fees and expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

123. ~~106.~~ “Professional Fee Escrow Account” means an escrow account funded by the Debtors with Cash no later than the Effective Date in an amount equal to the Professional Fee Escrow Amount.

124. ~~107.~~ “Professional Fee Escrow Amount” means the aggregate amount of quarterly U.S. Trustee fees, Professional Fee Claims, and other unpaid fees and expenses the Professionals have incurred or will incur in rendering services in connection with the Chapter 11 Cases prior to and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, which shall be estimated pursuant to the method set forth in Article II.B of the Plan.

125. ~~108.~~ “Proof of Claim” means a written proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

126. ~~109.~~ “Proof of Interest” means a written proof of Interest Filed against any of the Debtors in the Chapter 11 Cases.

127. ~~110.~~ “Purchase Price Cash” means the Cash paid by the Purchaser to OpCo pursuant to the Asset Purchase Agreement.

128. ~~111.~~ “Purchaser” means ~~West Realm Shires Inc~~ Binance US.

129. ~~112.~~ “Reinstated” or “Reinstatement” means, with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

130. ~~113.~~ “Related Party” means, with respect to any Entity, in each case in its capacity as such with respect to such Entity, such Entity’s current and former directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers,

employees, agents, trustees, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and advisors.

131. ~~144.~~ “Released Parties” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Wind-Down Debtors; (c) the Committee, and each of the members thereof; (d) each of the Released Professionals; (e) Purchaser and each of its Related Parties; (e) Alameda and each of its Related Parties; (f) each of the ~~Released Professionals; and (g) each of the~~ Released Voyager Employees (subject to the limitations contained in Article IV.~~EF~~ and Article IV.~~FG~~ of the Plan); provided that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Released Parties” under the Plan.

132. ~~145.~~ “Released Professionals” means the following professionals retained by the Debtors, the Committee, or the Purchaser (as applicable): (i) Kirkland & Ellis LLP; (ii) Moelis & Company LLC; (iii) Berkeley Research Group, LLC; (iv) Bankruptcy Management Solutions, Inc. d/b/a Stretto; (v) Quinn Emanuel Urquhart & Sullivan LLP; (vi) Fasken Martineau DuMoulin LLP; (vii) Campbells Legal (BVI); (viii) McDermott Will & Emery LLP; (ix) FTI Consulting, Inc.; (x) Epiq Corporate Restructuring, LLC; (xi) Cassels, Brock & Blackwell LLP; (xii) Paul Hastings LLP; (xiii) Harney Westwood & Riegels LP (BVI); (xiv) Day Pitney LLP (solely in their capacity as counsel to the Debtors); (xv) Jenner & Block LLP; (xvi) Seyfarth Shaw LLP; (xvii) Alvarez & Marsal ~~Holdings, LLC~~ Canada Inc.; (xviii) Blake, Cassels & Graydon LLP; ~~and (xix) Sullivan & Cromwell LLP.~~ Jaffe Raitt Heuer & Weiss; (xx) Latham & Watkins LLP; (xxi) Lowenstein Sandler LLP; (xxii) Kramer Levin LLP; and (xxiii) Acura Law Firm; provided that if the Asset Purchase Agreement is terminated, Latham & Watkins LLP shall not be a “Released Professional” under the Plan.

133. ~~146.~~ “Released Voyager Employees” means all directors, officers, and Persons employed by each of the Debtors and their Affiliates serving in such capacity on or after the Petition Date but before the Effective Date (subject to the limitations contained in Article IV.~~EF~~ and Article IV.~~FG~~ of the Plan).

134. ~~147.~~ “Releasing Parties” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Wind-Down Debtors; (c) the Committee, and each of the members thereof; (d) each of the Released Professionals; (e) each of the Released Voyager Employees; (f) ~~Alameda and each of its Related Parties to the extent Alameda is able to bind such Related Parties;~~ (g) ~~Purchaser and each of its Related Parties to the extent Purchaser is able to bind such Related Parties;~~ (h) all Holders of Claims that vote to accept the Plan and affirmatively opt into the releases provided by the Plan; (i) all Holders of Claims that vote to reject the Plan and affirmatively opt into the releases provided by the Plan; and (j) all Holders of Claims or Interests that abstain from voting (or are otherwise not entitled to vote) on the Plan and affirmatively opt into the releases provided by the Plan; provided that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Releasing Parties” under the Plan.

135. ~~148.~~ “Restructuring Transactions” means those mergers, amalgamations, consolidations, reorganizations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions, or other corporate transactions that the Debtors and the Committee jointly determine to be necessary to implement the transactions described in this Plan, as described in more detail in Article IV.B herein and the Restructuring Transactions Memorandum.

136. ~~149.~~ “Restructuring Transactions Memorandum” means that certain memorandum as may be amended, supplemented, or otherwise modified from time to time, describing the steps to be

carried out to effectuate the Restructuring Transactions, the form of which shall be included in the Plan Supplement, and which shall be in a form reasonably acceptable to the Committee.

137. ~~120.~~ “*Robertson Class Action*” means that certain putative class action litigation filed in the United States District Court for the Southern District of Florida, captioned *Robertson, et al. v. Cuban, et al.*, No. 1:22-cv-22538-RKA (S.D. Fla. Aug. 10, 2022).

138. ~~121.~~ “*Sale Transaction*” means the sale of certain of the Debtors’ assets and all other transactions pursuant to the Asset Purchase Agreement.

139. ~~122.~~ “*Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance acceptable to the Purchaser and in all respects consistent with the terms of the Asset Purchase Agreement, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors and assigned to the Purchaser pursuant to the Plan and Asset Purchase Agreement, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Trust, as applicable, in accordance with the Plan.

140. ~~123.~~ “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance reasonably acceptable to the Committee, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Trust, as applicable, in accordance with the Plan.

141. ~~124.~~ “*Schedule of Retained Causes of Action*” means the schedule of certain Causes of Action of the Debtors that are not released, waived, settled, compromised, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors and/or the Wind-Down Entity, which shall be included in the Plan Supplement. For the avoidance of doubt, any failure to specifically list any Causes of Action on the Schedule of Retained Causes of Action shall not be deemed a waiver or admission that any such Cause of Action does not constitute Vested Causes of Action.

142. ~~125.~~ “*Schedules*” means, collectively, the schedules of assets and liabilities, Schedule of Assumed Executory Contracts and Unexpired Leases, Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by each of the Debtors pursuant to section 521 of the Bankruptcy Code, as such schedules and statements may have been or may be amended, modified, or supplemented from time to time.

143. ~~126.~~ “*SEC*” means the United States Securities and Exchange Commission.

144. ~~127.~~ “*Section 510(b) Claim*” means any Claim against a Debtor subject to subordination under section 510(b) of the Bankruptcy Code.

145. ~~128.~~ “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a secured Claim.



146. ~~129.~~ “*Secured Tax Claim*” means any Secured Claim against a Debtor that, absent its Secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

147. ~~130.~~ “*Securities Act*” means the U.S. Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

148. ~~131.~~ “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act.

149. ~~132.~~ “*Side-A Policy*” means the Cornerstone A-Side Management Liability Policy, ELU184179-22, issued by XL Specialty Insurance Company, for the July 1, 2022 to July 1, 2023 period.

150. ~~133.~~ “*Solicitation Materials*” means all solicitation materials with respect to the Plan.

151. ~~134.~~ “*Special Committee*” means the special committee established at OpCo, comprised of two independent directors, to conduct the Special Committee Investigation.

152. ~~135.~~ “*Special Committee Investigation*” ~~has the meaning set forth in Article IV.F of the Plan~~ means that certain investigation undertaken by the Special Committee into certain historical transactions, as more fully described in the Disclosure Statement.

153. “*Supported Jurisdiction*” has the meaning ascribed to it in the Asset Purchase Agreement.

154. ~~136.~~ “*TopCo*” means Voyager Digital Ltd., a Canadian corporation that is publicly traded on the Toronto Stock Exchange.

155. ~~137.~~ “*TopCo General Unsecured Claim*” means any Claim against TopCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Alameda Loan Facility Claim; (h) an Intercompany Claim; or (i) a Section 510(b) Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation, other than 510(b) Claims, against TopCo are TopCo General Unsecured Claims.

156. ~~138.~~ “*Transferred Creditors*” means Account Holders and Holders of Allowed OpCo General Unsecured Claims who have completed all documentation and “KYC” processes reasonably required by Purchaser in the ordinary course of Purchaser’s business with respect to similarly situated clients and who have opened ~~FTX~~ a Binance US Accounts as of the date that is three (3) months following the later of the Closing Date (as defined in the Asset Purchase Agreement) or such later date as may be specified in the Customer ~~Migration~~ Onboarding Protocol, and the successors and assigns of such Holders.

157. ~~139.~~ “*Transferred Cryptocurrency Value*” means the ~~fair-market-value~~ aggregate VWAP of any Cryptocurrency ~~constituting an Acquired Asset~~ that is the subject of an Additional Bankruptcy Distribution as of the date that is two Business Days prior to such Additional Bankruptcy Distribution.

158. ~~140.~~ “*U.S. Trustee*” means the Office of the United States Trustee for Region 2.

159. ~~141.~~ “*Unclaimed Distribution*” means any distribution under the Plan on account of an Allowed Claim or Allowed Interest to a Holder that, after the expiration of six months after the Effective



Date, has not: (a) accepted a distribution, (b) given notice to the Wind-Down Trust of an intent to accept a particular distribution, (c) responded to the Debtors' or Wind-Down Trust's requests for information necessary to facilitate a particular distribution, or (d) taken any other action necessary to facilitate such distribution.

160. ~~142.~~ "*Unexpired Lease*" means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or section 1123 of the Bankruptcy Code.

161. ~~143.~~ "*Unimpaired*" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

162. "*Unsupported Jurisdiction*" has the meaning ascribed to it in the Asset Purchase Agreement.

163. "*Unsupported Jurisdiction Approval*" has the meaning ascribed to it in the Asset Purchase Agreement.

164. ~~144.~~ "*Vested Causes of Action*" means the Causes of Action vesting in the Wind-Down Entity pursuant to Article IV.~~OL~~ of the Plan, including, but not limited to, those Causes of Action enumerated on the Schedule of Retained Causes of Action, which shall be included in the Plan Supplement and in all respects consistent with the terms of the Asset Purchase Agreement.

165. ~~145.~~ "*VGX*" means Voyager Token, that certain Cryptocurrency issued by the Debtors.

166. ~~146.~~ "*Voting Deadline*" means ~~November~~ January 29, 20223.

167. ~~147.~~ "*Voyager*" means Voyager Digital Ltd. and its direct and indirect Affiliates.

168. "*VWAP*" means, with respect to any type of Cryptocurrency and as of any date of determination, an amount equal to the volume weighted average price in U.S. dollars for such type of Cryptocurrency for the consecutive 24-hour period immediately prior to 8:00 a.m. New York Time on such date of determination, as reported on <https://coinmarketcap.com>.

169. ~~148.~~ "*Wind-Down Debtor*" means a Debtor, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date.

170. ~~149.~~ "*Wind-Down Entity*" means the Wind-Down Debtor or the Wind-Down Trust, as applicable, pursuant to the Restructuring Transactions Memorandum.

171. ~~150.~~ "*Wind-Down Entity Assets*" means the Wind-Down Trust Assets or any assets transferred to the Wind-Down Debtor, as applicable.

172. ~~151.~~ "*Wind-Down Reserve*" means an amount, which shall be agreed upon between the Debtors and the Committee prior to the Confirmation Hearing.

173. ~~152.~~ "*Wind-Down Trust*" means the trust established on the Effective Date and described in Article IV.~~GH~~ to be established under Delaware trust law that, among other things, shall effectuate the wind-down of the Wind-Down Debtors, commence, litigate and settle the Vested Causes of Action that are not released, waived, settled, compromised, or transferred under the Plan and make distributions pursuant to the terms of the Plan and the Wind-Down Trust Agreement; *provided that*, for the avoidance

of doubt, the Wind-Down Trust shall not conduct any business operations or continue the Debtors' business operations after the Effective Date.

174. ~~153.~~ “*Wind-Down Trust Agreement*” means that certain trust agreement by and among the Debtors, the Committee, and the Wind-Down Trust, which shall be included in the Plan Supplement in a form reasonably acceptable to the Committee.

175. ~~154.~~ “*Wind-Down Trust Assets*” means all of the Debtors' assets transferred to, and vesting in, the Wind-Down Trust pursuant to the Wind-Down Trust Agreement, which, in the event the Sale Transaction is consummated, shall exclude the Acquired Assets, and which shall include, without limitation but only to the extent the following are not Acquired Assets, (a) the Wind-Down Reserve, (b) to the extent not purchased by Purchaser pursuant to the Asset Purchase Agreement, all VGX held by the Debtors as of the Petition Date, (c) 3AC Claims and 3AC Recovery, (d) ~~the FTX Claims and FTX Recovery~~, (e) Alameda Claims and Alameda Recovery, (f) the Non-Non-Released D&O Claims, and (g) the Vested Causes of Action.

176. ~~155.~~ “*Wind-Down Trust Beneficiaries*” means the Holders of Allowed Claims or Allowed Interests that are entitled to receive distributions pursuant to the terms of the Plan, whether or not such Claims or Interests are Allowed as of the Effective Date.

177. ~~156.~~ “*Wind-Down Trust Expenses*” means all actual and necessary costs and expenses incurred by the Wind-Down Trustee in connection with carrying out the obligations of the Wind-Down Trust pursuant to the terms of the Plan and the Wind-Down Trust Agreement.

178. ~~157.~~ “*Wind-Down Trust Oversight Committee*” means the oversight committee tasked with overseeing the Wind-Down Trust in accordance with the Plan and the Wind-Down Trust Agreement.

179. ~~158.~~ “*Wind-Down Trust Units*” means the beneficial interests in the Wind-Down Trust as more fully set forth in the Wind-Down Trust Agreement.

180. ~~159.~~ “*Wind-Down Trustee*” means the Person or Persons selected by the Committee, after consultation with the Debtors, subject to the approval of the Bankruptcy Court and identified in the Plan Supplement, to serve as the trustee(s) of the Wind-Down Trust, and any successor thereto, appointed pursuant to the Wind-Down Trust Agreement.

## **B. Rules of Interpretation**

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; (2) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form; (3) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (4) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed, shall mean that document, schedule, or exhibit, as it may thereafter have been or may thereafter be validly amended, amended and restated, supplemented, or otherwise modified; (5) unless otherwise specified, any reference to an Entity as a Holder of a Claim or Interest, includes that Entity's successors and assigns; (6) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (7) unless

otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (8) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (12) references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (13) unless otherwise specified, all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases; (14) any effectuating provisions may be interpreted by the Debtors or the Wind-Down Trust in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; (15) any references herein to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter; (16) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; (17) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable state limited liability company laws; and (18) the use of “include” or “including” is without limitation unless otherwise stated.

#### **C. Computation of Time**

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

#### **D. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan and any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, documents, instruments, or contracts, in which case the governing law of such agreement shall control); *provided that* corporate, limited liability company, or partnership governance matters relating to the Debtors or the Wind-Down Debtors, as applicable, shall be governed by the laws of the jurisdiction of incorporation or formation of the relevant Debtor or Wind-Down Debtor, as applicable.

#### **E. Reference to Monetary Figures**

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

**F. Reference to the Debtors or the Wind-Down Debtors**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Wind-Down Debtors mean the Debtors and the Wind-Down Debtors, as applicable, to the extent the context requires.

**G. Nonconsolidated Plan**

Although for purposes of administrative convenience and efficiency the Plan has been filed as a joint plan for each of the Debtors and presents together Classes of Claims against and Interests in the Debtors, the Plan does not provide for the substantive consolidation of any of the Debtors.

**ARTICLE II.**

**ADMINISTRATIVE AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

**A. Administrative Claims**

Except as otherwise provided in this Article II.A and except with respect to Administrative Claims that are Professional Fee Claims or subject to 11 U.S.C. § 503(b)(1)(D), unless previously Filed, requests for payment of Allowed Administrative Claims (other than Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code) must be Filed and served on the Wind-Down Entity pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such Administrative Claims shall be deemed satisfied as of the Effective Date without the need for any objection from the Wind-Down Entity or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity. Objections to such requests, if any, must be Filed and served on the Wind-Down Entity and the requesting party by the Claims Objection Bar Date for Administrative Claims. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order of the Bankruptcy Court.

Except with respect to Administrative Claims that are Professional Fee Claims, and except to the extent that an Administrative Claim or Priority Tax Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Claim and the applicable Debtor(s) agree to less favorable treatment, each Holder of an Allowed Administrative Claim shall receive an amount of Cash equal to the amount of the unpaid or unsatisfied portion of such Allowed Administrative Claim in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Effective Date, no later than thirty (30) days after the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to

such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Wind-Down Entity, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court. Any Cryptocurrency inadvertently deposited to the Debtors' account(s) after the Petition Date shall be returned to the sender in full.

Objections to requests for payment of such Administrative Claims, if any, must be Filed with the Bankruptcy Court and served on the Wind-Down Entity and the requesting Holder no later than the Claims Objection Bar Date for Administrative Claims. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, an order that becomes a Final Order of the Bankruptcy Court.

## **B. Professional Fee Claims**

### **1. Final Fee Applications and Payment of Professional Fee Claims**

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules. The Wind-Down Entity shall pay Professional Fee Claims in Cash to such Professionals in the amount the Bankruptcy Court allows, including from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court; *provided* that the Debtors' and the Wind-Down Entity's obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account.

### **2. Professional Fee Escrow Account**

No later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and the U.S. Trustee and for no other Entities until all quarterly U.S. Trustee fees and all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the U.S. Trustee or to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. No funds held in the Professional Fee Escrow Account shall be property of the Estates of the Debtors or the Wind-Down Entity. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, and all U.S. Trustee quarterly fees plus statutory interest, if any, have been paid in full, any remaining funds held in the Professional Fee Escrow Account shall be turned over to the Wind-Down Entity without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

### **3. Professional Fee Escrow Amount**

The Professionals shall deliver to the Debtors a reasonable and good-faith estimate of their unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, and shall deliver such estimate no

later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Fee Claims Filed with the Bankruptcy Court, and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated to be outstanding as of the anticipated Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account; *provided* that the Wind-Down Entity shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

#### 4. Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors and/or the Wind-Down Entity, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Wind-Down Entity. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Entity may employ and pay any Professional in the ordinary course of business for the period after the Confirmation Date without any further notice to or action, order, or approval of the Bankruptcy Court.

For the avoidance of doubt, no Administrative Claims, Professional Fee Claims, or any other post-confirmation fees and expenses shall be paid prior to payment of any quarterly fees due and outstanding to the U.S. Trustee.

#### C. **Priority Tax Claims**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release ~~of~~, and in exchange for, each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

### ARTICLE III.

#### CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

##### A. **Classification of Claims and Interests**

Except for the Claims addressed in Article II of the Plan, all Claims against and Interests in the Debtors are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions pursuant to the Plan and in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under



the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

## B. Summary of Classification

A summary of the classification of Claims against and Interests in each Debtor pursuant to the Plan is set forth in the following chart. The Plan constitutes a separate chapter 11 plan for each of the Debtors, and accordingly, the classification of Claims and Interests set forth below applies separately to each of the Debtors. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes, and such Claims or Interests shall be treated as set forth in Article III.E hereof. Voting tabulations for recording acceptances or rejections of the Plan will be conducted on a Debtor-by-Debtor basis as set forth above.<sup>1</sup>

Class	Claim or Interest	Status	Voting Rights
1	Secured Tax Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3	Account Holder Claims	Impaired	Entitled to Vote
<del>4A</del>	<del>Alameda Loan Facility</del> <u>OpCo General Unsecured</u> Claims	Impaired	Entitled to Vote
<del>5A4</del> <u>B</u>	<del>OpCo</del> <u>HoldCo</u> General Unsecured Claims	Impaired	Entitled to Vote
<del>5B4</del> <u>C</u>	<del>HoldCo</del> <u>TopCo</u> General Unsecured Claims	Impaired	Entitled to Vote
<del>5C5</del>	<del>TopCo General Unsecured</del> <u>Alameda Loan Facility</u> Claims	Impaired	<u>Not</u> Entitled to Vote ( <u>Deemed to Reject</u> )
6	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
8	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
9	Existing Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

<sup>1</sup> The Debtors reserve the right to separately classify Claims or Interests to the extent necessary to comply with any requirements under the Bankruptcy Code or applicable law.

### C. Treatment of Classes of Claims and Interests

Subject to Article VI hereof, each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in exchange for such Holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors or Wind-Down Entity, as applicable, and the Holder of such Allowed Claim or Allowed Interest, as applicable. In no event shall any Holder of a Claim receive more than such Holder's Allowed amount on account of such Claim.

#### 1. Class 1 — Secured Tax Claims

- (a) *Classification:* Class 1 consists of all Secured Tax Claims.
- (b) *Treatment:* Each Holder of an Allowed Secured Tax Claim shall receive, in full and final satisfaction of such Allowed Secured Tax Claim, at the option of the Wind-Down Entity, payment in full in Cash of such Holder's Allowed Secured Tax Claim or such other treatment rendering such Holder's Allowed Secured Tax Claim Unimpaired.
- (c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Allowed Secured Tax Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Secured Tax Claims are not entitled to vote to accept or reject the Plan.

#### 2. Class 2 — Other Priority Claims

- (a) *Classification:* Class 2 consists of all Other Priority Claims.
- (b) *Treatment:* Each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction of such Allowed Other Priority Claim, at the option of the applicable Debtor, payment in full in Cash of such Holder's Allowed Other Priority Claim or such other treatment rendering such Holder's Allowed Other Priority Claim Unimpaired.
- (c) *Voting:* Class 2 is Unimpaired under the Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

#### 3. Class 3 — Account Holder Claims

- (a) *Classification:* Class 3 consists of all Account Holder Claims.
- (b) *Allowance:* Account Holder Claims shall be conclusively Allowed in the amount listed on OpCos's *Amended Schedules of Assets and Liabilities* (Case No. 22-10945) [Docket No. 198]; *provided* that the rights of any Holder of an Account Holder Claim to object to the scheduled amount shall be preserved. To the extent an Account Holder Claim is Allowed in a greater amount than the scheduled amount of such Account Holder Claim, such Holder shall be entitled to a subsequent distribution such that it will receive its Pro Rata share of

recoveries to Holders of Allowed Account Holder Claims. Account Holder Claims shall be valued in U.S. dollars as of the Petition Date consistent with section 502(b) of the Bankruptcy Code.

- (c) *Treatment:* Each Holder of an Allowed Account Holder Claim will receive in exchange for such Allowed Account Holder Claim:

(i) If the Sale Transaction is consummated by the Outside Date:

A. for Account Holders in Supported Jurisdictions, its Net Owed Coins, as provided in and subject to the requirements of Section 6.12 of the Asset Purchase Agreement;

B. for Account Holders in Unsupported Jurisdictions, value in Cash at which such Net Owned Coins allocable to such Account Holder are liquidated; provided that to the extent that the Purchaser obtains the Unsupported Jurisdiction Approval for the jurisdiction in which such Account Holder resides and the Debtors and/or Wind-Down Entity has not made such Cash distribution to such Account Holder, then such Account Holder shall receive the treatment in Article III.C.3(c)(i)(A);

C. ~~(i)~~ its Pro Rata share of Transferred Cryptocurrency Value any Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in the Customer Migration Protocol and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;

~~(ii) the right to become a Transferred Creditor as provided in the Customer Migration Protocol;~~

D. ~~(iii)~~ its Pro Rata share of Distributable OpCo Cash; and

E. ~~(iv)~~ to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets attributable to OpCo; provided that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims;

provided that distributions made to any Account Holder pursuant to clauses (C), (D), and (E) above shall be made after taking into account the Acquired Coins Value of the Net Owed Coins or the value in Cash at which such Net Owned Coins are liquidated, as applicable, previously allocated to such Account Holder; or

~~(d) Voting: Class 3 is Impaired under the Plan. Holders of Allowed Account Holder Claims are entitled to vote to accept or reject the Plan.~~

~~4. Class 4 — Alameda Loan Facility Claims~~

~~(a) Classification: Class 4 consists of all Alameda Loan Facility Claims.~~

~~(b) Treatment: Pursuant to the Asset Purchase Agreement, on the Effective Date, the Alameda Loan Facility Claims shall be deemed Allowed, and all rights, titles, and interests in the Alameda Loan Facility Claims shall be conveyed to OpCo, and OpCo shall be entitled to any recovery on account of the Alameda Loan Facility Claims. The treatment of Class 4 Alameda Loan Facility Claims is contractually settled pursuant to the Asset Purchase Agreement.~~

(ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:

A. its Pro Rata share of Distributable OpCo Cash;

B. its Pro Rata share of Distributable Cryptocurrency, which such Account Holder shall be able to withdraw in kind, alternative Cryptocurrency, and/or Cash for a period of thirty (30) days after the Effective Date through the Voyager platform or, if elected by Seller pursuant to Section 6.12(d) of the Asset Purchase Agreement, through the Binance.US Platform; provided that if the applicable transfer is made through the Voyager platform and such Account Holder does not withdraw its Pro Rata share of Distributable Cryptocurrency available to such Account Holder from the Voyager platform within such thirty (30) day period, such Account Holder will receive Cash in the equivalent value to its Pro Rata share of Distributable Cryptocurrency; and

C. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to OpCo; provided that any distributions on account of Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.

(b) (e) Voting: Class 43 is Impaired under the Plan. Holders of Allowed Alameda Loan Facility Account Holder Claims are entitled to vote to accept or reject the Plan.

4. ~~5.~~ Class ~~5A~~4A — OpCo General Unsecured Claims

- (a) *Classification:* Class ~~5A~~4A consists of all OpCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed OpCo General Unsecured Claim will receive in exchange for such Allowed OpCo General Unsecured Claim:

(i) If the Sale Transaction is consummated by the Outside Date:

A. its Pro Rata share of Distributable Cryptocurrency in Cash;

B. ~~(i)~~ its Pro Rata share of ~~Transferred Cryptocurrency Value~~Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in ~~the Customer Migration Protocol~~and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;

~~(ii) the right to become a Transferred Creditor as provided in the Customer Migration Protocol;~~

C. ~~(iii)~~ its Pro Rata share of Distributable OpCo Cash; and

D. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets attributable to OpCo; provided that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims; or

(ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:

A. its Pro Rata share of Distributable Cryptocurrency in Cash;

B. its Pro Rata share of Distributable OpCo Cash; and

C. ~~(iv)~~ to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to OpCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.

- (c) *Voting:* Class ~~5A4A~~ is Impaired under the Plan. Holders of Allowed OpCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

5. ~~6.~~ Class ~~5B4B~~ — HoldCo General Unsecured Claims

- (a) *Classification:* Class ~~5B4B~~ consists of all HoldCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed HoldCo General Unsecured Claim will receive in exchange for such Allowed HoldCo General Unsecured Claim:
- (i) its Pro Rata share of Distributable HoldCo Cash; and
- (ii) to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to HoldCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.
- (c) *Voting:* Class ~~5B4B~~ is Impaired under the Plan. Holders of Allowed HoldCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

6. ~~7.~~ Class ~~5C4C~~ — TopCo General Unsecured Claims

- (a) *Classification:* Class ~~5C4C~~ consists of all TopCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed TopCo General Unsecured Claim will receive in exchange for such Allowed TopCo General Unsecured Claim:
- (i) its Pro Rata share of Distributable TopCo Cash; and
- (ii) to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of the Wind-Down Trust Assets attributable to TopCo; *provided* that any distributions on account of the Wind-Down Entity Assets or the Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.
- (c) *Voting:* Class ~~5C4C~~ is Impaired under the Plan. Holders of Allowed TopCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 5 — Alameda Loan Facility Claims

- (a) *Classification:* Class 5 consists of all Alameda Loan Facility Claims.
- (b) *Treatment:* Each Holder of an Allowed Alameda Loan Facility Claim will receive in exchange for such Allowed Alameda Loan Facility Claim to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down



Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets; provided that any distributions on account of Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, all Allowed Claims at OpCo, HoldCo, and TopCo, including, but not limited to, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, Allowed Account Holder Claims, Allowed OpCo General Unsecured Claims, Allowed HoldCo General Unsecured Claims, and Allowed TopCo General Unsecured Claims.

(c) Voting: Class 5 is Impaired under the Plan. Holders of Allowed Alameda Loan Facility Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Allowed Alameda Loan Facility Claims are not entitled to vote to accept or reject the Plan.

8. Class 6 — Section 510(b) Claims

- (a) *Classification:* Class 6 consists of all Section 510(b) Claims against TopCo.
- (b) *Allowance:* Notwithstanding anything to the contrary herein, a Section 510(b) Claim against TopCo, if any such Section 510(b) Claim exists, may only become Allowed by Final Order of the Bankruptcy Court.
- (c) *Treatment:* Each Holder of Allowed Section 510(b) Claims against TopCo will receive, to effectuate distributions, if applicable, from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to TopCo; *provided that any distributions on account of the Wind-Down Entity Assets or* Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims.
- (d) *Voting:* Class 6 is Impaired under the Plan. Holders (if any) of Allowed Section 510(b) Claims against TopCo are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders (if any) of Allowed Section 510(b) Claims against TopCo are not entitled to vote to accept or reject the Plan.

9. Class 7 — Intercompany Claims

- (a) *Classification:* Class 7 consists of all Intercompany Claims.
- (b) *Treatment:* On the Effective Date, all Intercompany Claims shall be, at the option of the Debtors, either (a) Reinstated or (b) converted to equity, otherwise set off, settled, distributed, contributed, or cancelled, in each case in accordance with the Restructuring Transactions Memorandum.
- (c) *Voting:* Holders of Intercompany Claims are either Unimpaired or Impaired, and such Holders of Intercompany Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore,

Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

## 10. Class 8 — Intercompany Interests

- (a) *Classification:* Class 8 consists of all Intercompany Interests.
- (b) *Treatment:* On the Effective Date, all Intercompany Interests shall be, at the option of the Debtors, either (a) Reinstated in accordance with Article III.G of the Plan or (b) set off, settled, addressed, distributed, contributed, merged, or cancelled, in each case in accordance with the Restructuring Transactions Memorandum.
- (c) *Voting:* Holders of Intercompany Interests are either Unimpaired or Impaired, and such Holders of Intercompany Interests are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

11. Class 9 — Existing Equity Interests

- (a) *Classification:* Class 9 consists of all Existing Equity Interests.
- (b) *Treatment:* Each Holder of Existing Equity Interests will receive, to effectuate distributions, if applicable, from the Wind-Down Entity, its Pro Rata share of the Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets attributable to TopCo; *provided* that any distributions on account of Wind-Down Trust Units shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims.
- (c) *Voting:* Class 9 is Impaired under the Plan. Holders of Existing Equity Interests are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan.

#### **D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Wind-Down Entity's rights in respect of any Unimpaired Claim, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

### E. Elimination of Vacant Classes; Presumed Acceptance by Non-Voting Classes

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

#### **F. Subordinated Claims**

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims against and Allowed Interests in the Debtors and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Wind-Down Entity reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

#### **G. Intercompany Interests**

To the extent Reinstated under the Plan, distributions (if any) on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience and due to the importance of maintaining the corporate structure given the existing intercompany systems connecting the Debtors and their Affiliates, and in exchange for the Debtors' and Wind-Down Entity's agreement under the Plan to make certain distributions to the Holders of Allowed Claims.

#### **H. Controversy Concerning Impairment**

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

#### **I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code is satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims or Interests. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

### **ARTICLE IV.**

#### **PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

##### **A. General Settlement of Claims and Interests**

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such

compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as well as a finding by the Bankruptcy Court that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

## **B. Restructuring Transactions**

On or before the Effective Date, the applicable Debtors will take any action as may be necessary or advisable to effectuate the Restructuring Transactions described in the Plan, the Restructuring Transactions Memorandum, and the Customer ~~Migration~~Onboarding Protocol, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (4) the transfer or distribution of any Cryptocurrency or Cash pursuant to the ~~Customer Migration Protocol or the~~ Asset Purchase Agreement, or the Liquidation Procedures, as applicable; (5) the execution and delivery of the Wind-Down Trust Agreement; (6) any transactions necessary or appropriate to form the Wind-Down Entity; (7) such other transactions that are required to effectuate the Restructuring Transactions, including any sales, mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (8) all transactions necessary to provide for the purchase of the Acquired Assets by Purchaser under the Asset Purchase Agreement; and (9) all other actions that the applicable Entities determine to be necessary or appropriate, or that are reasonably requested by the Purchaser in accordance with the Asset Purchase Agreement, including making filings or recordings that may be required by applicable law.

The Confirmation Order shall, and shall be deemed to, pursuant to sections 1123 and 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Restructuring Transactions.

## **C. The Sale Transaction**

If the Sale Transaction is consummated by the Outside Date, pursuant to the terms of the Asset Purchase Agreement, then the following terms shall govern:

On or prior to the Effective Date, the Debtors shall have consummated the Sale Transaction, and, among other things, the Acquired Assets and Assumed Liabilities shall have transferred to the Purchaser free and clear of all Liens, Claims, Interests, charges, or other encumbrances, and the Purchaser shall pay to the Debtors or Holders of Account Holder Claims and Holders of OpCo General Unsecured Claims, as applicable, the proceeds from the Sale Transaction, as and to the extent provided for in the Asset Purchase Agreement, and ~~the Customer Migration Protocol~~this Plan. The Confirmation Order shall authorize the Debtors, the Purchaser, and the Wind-Down Entity, as applicable, to undertake the transactions contemplated by the Asset Purchase Agreement, including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code.

The Debtors and Purchaser shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Sale Transaction pursuant to the terms of the Asset Purchase Agreement, the Customer ~~Migration~~ Onboarding Protocol, and this Plan. The Debtors shall be authorized to sell any Cryptocurrency to satisfy all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims. On and after the Effective Date, except as otherwise provided in the Plan and the Wind-Down Trust Agreement, the Wind-Down Debtors, the Wind-Down Entity, or the Purchaser, as applicable, may operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

Notwithstanding anything contained in this Plan and any Definitive Documents, if the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated, all provisions contained in this Plan and the Definitive Documents governing the Sale Transaction shall have no further force and effect, and the provisions governing the Liquidation Transaction shall govern. The rights and remedies of the Seller and Purchaser under the Asset Purchase Agreement and any related orders of the Bankruptcy Court shall be expressly preserved.

#### **D. The Liquidation Transaction**

If the Sale Transaction is not consummated by the Outside Date, pursuant to the Asset Purchase Agreement, then the following terms shall govern:

##### **1. The Liquidation Transaction**

On or after the Outside Date, the Debtors will pursue the Liquidation Transaction in accordance with the Liquidation Procedures. Pursuant to the Liquidation Transaction, the Debtors, the Wind-Down Entity, or the Wind-Down Trustee, as applicable, will distribute certain of the Cryptocurrency in-kind to Holders of Account Holder Claims in accordance with Article III.C of the Plan, transfer all Wind-Down Entity Assets or Wind-Down Trust Assets to the Wind-Down Reserve, liquidate certain of the Cryptocurrency, distribute Cash to Holders of Claims, wind down and dissolve the Debtors, and pursue final administration of the Debtors' Estates pursuant to the Bankruptcy Code.

The Debtors, or the Wind-Down Entity, as applicable, shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Liquidation Transaction pursuant to this Plan. On or before the date that is twenty-one days prior to the anticipated commencement of the Liquidation Transaction, the Debtors, or the Wind-Down Entity, as applicable, shall file the Liquidation Procedures with the Bankruptcy Court. Parties in interest shall have ten days to object to the Liquidation Procedures, and if no objections are timely filed, the Liquidation Procedures shall be approved. In the event of a timely objection, the Bankruptcy Court shall adjudicate any objection to the Liquidation Procedures.

On and after the Effective Date, except as otherwise provided in the Plan, the Wind-Down Trust Agreement, and the Liquidation Procedures, the Wind-Down Debtors or the Wind-Down Entity as applicable, may operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.



2. *Cryptocurrency Rebalancing*

Prior to the Effective Date the Debtors shall, in consultation with the Committee, be authorized to rebalance their Cryptocurrency portfolio, *provided* that such rebalancing shall be in accordance with the Asset Purchase Agreement. The Debtors may effectuate such rebalancing by (i) selling such Cryptocurrency that cannot be distributed to Account Holders, (ii) purchasing Cryptocurrency supported by Voyager's or Purchaser's platform (as provided by the Asset Purchase Agreement) that shall be distributed to Account Holders, and (iii) engaging in any other transaction, including the execution of trades of Cryptocurrency, necessary or appropriate to effectuate distributions of the Distributable Cryptocurrency to Holders of Allowed Account Holder Claims.

**E. ~~D.~~ Management Transition Plan**

The Debtors shall be authorized to implement the Management Transition Plan, the terms of which shall be reasonably acceptable to Purchaser and the Committee and included in the Plan Supplement. The Management Transition Plan shall help ensure that employees are available to provide transition services to the Debtors and/or the Wind-Down Entity to effectuate the Sale Transaction and to wind down the Debtors' Estates.

**F. ~~E.~~ Non-Released D&O Claims**

Any Claims or Causes of Action held by the Debtors or their respective estates against the Debtors' CEO and/or CCO (regardless of any fiduciary capacity in which such individuals were acting) that are expressly related to approval of the 3AC Loan are not released pursuant to the Plan (collectively, the "Non-Released D&O Claims"), and shall be assigned and transferred to the Wind-Down Entity to be pursued, settled, or resolved by the Wind-Down Entity in accordance with the terms of Article IV.~~FG~~ of this Plan and subject to the Wind-Down Reserve. Any claims against the D&O Carriers that the Debtors' insurance transactions within the 90 days prior to the Petition Date are avoidable under the Bankruptcy Code, applicable state law, or both (the "Non-Released Insurance Claims") shall be assigned and transferred to the Wind-Down Entity to be pursued, settled, or resolved solely by the Wind-Down Entity in accordance with the terms of Article IV.~~FG~~ of this Plan. The Wind-Down Entity shall be a successor to the Debtors' rights, title, and interest in any Non-Released D&O Claims and Non-Released Insurance Claims, and the Wind-Down Entity shall have standing to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims in accordance with the terms of Article IV.~~FG~~ of this Plan; *provided* that: (i) any recovery by the Wind-Down Entity (and the beneficiaries thereof) on account of any Non-Released D&O Claim, including in each case by way of settlement or judgment, shall be satisfied solely by and to the extent of the proceeds of the Debtors' available D&O Liability Insurance Policies (and/or from the D&O Carriers directly) after payment from such D&O Liability Insurance Policies of any and all covered costs and expenses incurred in connection with the defense of the Non-Released D&O Claims; (ii) any party, including any trustee or any beneficiary of the Wind-Down Entity, seeking to execute, garnish, or otherwise attempt to collect on any settlement of or judgment in the Non-Released D&O Claims shall do so solely upon available insurance coverage from the Debtors' available D&O Liability Insurance Policies; and (iii) no party shall (a) record any judgment against the CEO or CCO, or (b) otherwise attempt to collect, directly or indirectly, from the personal assets of the CEO or CCO with respect to the Non-Released D&O Claims. For the avoidance of doubt, this provision does not enjoin, limit, or impair direct claims held by third parties against the Debtors' CEO or CCO (if any) other than any direct claims held by Holders of Claims or Interests that opt into the third party release in Article VIII.B of this Plan. Only upon the occurrence of the earlier of (x) a release being given as part of any later settlement of the Non-Released D&O Claims; (y) final resolution of any coverage claims asserted against the Debtors' available D&O Liability Insurance Policies on account of the Non-Released D&O Claims; or (z) exhaustion of the available insurance coverage under the D&O Liability Insurance



Policies, the Non-Released D&O Claims shall be released and discharged without the need for further action or Bankruptcy Court order. For the avoidance of doubt, any release of the Non-Released D&O Claims shall not become effective until one of the three conditions stated in the preceding sentence above has been met.

**G.** ~~**F.**~~ **The D&O Settlement**

On the Effective Date, the terms of the D&O Settlement shall be effectuated as provided in this Article IV.~~**F.**~~**G.**

Pursuant to the D&O Settlement, CEO shall repay the \$1,900,000 received from the Debtors on or around February 28, 2022, by paying the after-tax amount of such transfer (approximately \$1,125,000) to OpCo in cash and assigning the right, if any, to any tax refund for the balance to the Wind-Down Entity. CEO shall subordinate any Claims (including any indemnification claims asserted under this Art. IV.F) he holds against the Debtors until all other Holders of Claims are paid in full. CCO shall subordinate 50 percent of any Claims he holds other than indemnification claims (and 100% of any indemnification claims asserted under this Art. IV.F) against the Debtors until all other Holders of Claims are paid in full; *provided, however*, that in the event the D&O Carriers deny coverage to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.

CEO and CCO, each as insureds, under the D&O Liability Insurance Policies agree: (i) not to draw down on the Side-A Policy; *provided, however*, that should coverage continue to be available under the Side-A Policy following resolution of the Debtors' and/or the Wind-Down Entity's claims for the avoidance of the premium paid for the policy (whether by judgment or settlement or otherwise) such officer shall be entitled to seek coverage under the Side-A Policy to the extent any such coverage remains; and (ii) not to object to any settlement by the Debtors or Wind Down Entity of avoidance claims under the Side-A Policy, even if such settlement results in termination of benefits under the Side-A Policy. For the avoidance of doubt, this agreement is not intended to and shall not alter or amend each of the insureds' duties under the D&O Liability Insurance Policies. In the event that any insurer under the D&O Liability Insurance Policies denies coverage for any reason, the Wind-Down Entity shall have the right to bring a coverage claim against the insurer(s) in the name of the insured, the insureds shall reasonably cooperate with respect to any such claim, and the insured may participate at their election (and at their sole cost). For the avoidance of doubt, nothing contained in this Plan is intended as a waiver or release of the Debtors' and/or Wind-Down Entity's right to assert any Non-Released D&O Claim, but rather limits such recovery in the manner set forth above.

CEO and CCO shall be entitled to receive their salary and benefits for as long as they work for the Debtors and/or the Wind-Down Entity and retain the right to assert claims for advancement and indemnification up to the limits of any available coverage in the event any of the insurers that issued the Management Liability Policy, the Excess Policy, or the Side-A Policy denies coverage to CEO and/or CCO based upon or arising out of the lack of a formal claim for indemnification; *provided, however*, that any such indemnification or advancement claims shall be subordinated in full unless and until all other Holders of Claims are paid in full; *provided, further*, that in the event that any of the D&O Carriers deny coverage to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.

CEO and CCO shall subordinate any and all rights and entitlements under the Cornerstone A-Side Management Liability Insurance Policy to Voyager Digital Ltd., Policy Number ELU184179-22,

to any recovery by the Debtors and/or the Wind-Down Entity on account of the Debtors' and/or Wind-Down Entity's claims for the avoidance of the premium paid for the policy. For the avoidance of doubt, should coverage continue to be available under the Side-A Policy following resolution of the Debtors' and/or the Wind-Down Entity's claims for the avoidance of the premium paid for the policy (whether by judgment or settlement or otherwise), CEO and/or CCO shall be entitled to seek coverage under the Side-A Policy. CEO and CCO shall remain at, and continue performing the responsibilities of, their respective position(s) with the Debtors and assist with the Debtors' transition for at least 30 days from entry of the Confirmation Order; *provided* that CCO shall have no obligation to remain at his position with the Debtors beyond January 15, 2023 and the CEO shall have the right to pursue and engage in any employment opportunity, business venture, consulting arrangement, or investment that may become available; *provided, further*, that both the CEO and CCO shall be available to the Debtors and/or the Wind-Down Entity for a maximum of five hours per month for the one year following the Effective Date.

In the event that the sworn financial disclosure statements under penalty of perjury provided to the Debtors, the Special Committee and the Committee by CEO and CCO are later determined at any time by Final Order of the Bankruptcy Court or other court of competent jurisdiction to be materially inaccurate, (a) the limitations on recovery by the Wind-Down Entity under this Article IV.FG shall no longer apply, (b) any and all release, exculpation and injunction provisions in Article VIII of this Plan with respect to CEO and/or CCO (as applicable) shall be deemed null and void, (c) all Releasing Parties' rights with respect to the CEO and/or CCO (as applicable) shall be fully intact and preserved, (d) amounts paid by CEO shall not be repaid by the Wind-Down Entity, and (e) any applicable statute of limitations shall be deemed tolled from the Petition Date to the date of entry of the order referenced above. The Wind-Down Trust, as successor to the Debtors, shall have standing to bring a motion seeking relief pursuant to this Article IV.FG.

Entry of the Confirmation Order shall be deemed approval of the D&O Settlement and, to the extent not already approved by the Bankruptcy Court, the Debtors or the Wind-Down Debtors, as applicable, are authorized to negotiate, execute, and deliver those documents necessary or appropriate to effectuate the D&O Settlement, without further notice or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors, the Wind-Down Debtors, the Committee, and the Special Committee may deem to be necessary to effectuate the D&O Settlement.

#### H. ~~G.~~ Wind-Down Trust

On the Effective Date, the Wind-Down Trust shall be formed for the benefit of the Wind-Down Trust Beneficiaries and each of the Debtors shall transfer the Wind-Down Trust Assets for distribution in accordance with the terms of the Plan. The Confirmation Order shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan.

1. Establishment of a Wind-Down Trust

Pursuant to the Wind-Down Trust Agreement, the Wind-Down Trust will be established. The Wind-Down Trust shall be the successor-in-interest to the Debtors, and the Wind-Down Trust shall be a successor to the Debtors' rights, title, and interest to the Wind-Down Trust Assets. The Wind-Down Trust will conduct no business operations and will be charged with winding down the Debtors' Estates. The Wind-Down Trust shall be managed by the Wind-Down Trustee and shall be subject to a Wind-Down Trust Oversight Committee. For the avoidance of doubt, in the event that the Restructuring Transactions Memorandum specifies that the Wind-Down Debtors will be the Wind-Down Entity, the Wind-Down Debtors shall be managed by the Wind-Down Trustee and shall be subject to the Wind-Down Trust Oversight Committee in the same manner as if the Wind-Down Entity is the Wind-Down Trust. The Wind-Down Trust shall be administered in accordance with the terms of the Wind-Down Trust Agreement and shall be subject to the Wind-Down Reserve and the Non-Released D&O Claim Budget. For the avoidance of doubt, the Wind-Down Trust shall not have any right or interest in any Cause of Action or Claim constituting an Acquired Asset. The Wind-Down Trust shall be administered in a manner consistent with the SEC's published guidance on liquidating trusts.

Prior to the Effective Date, any and all of the Debtors' assets shall remain assets of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and on the Effective Date the Wind-Down Trust Assets shall, subject to the Wind-Down Trust Agreement, be transferred to and vest in the Wind-Down Trust or the Wind-Down Debtors, as applicable. For the avoidance of doubt, to the extent not otherwise waived in writing, released, settled, compromised, assigned or sold pursuant to a prior order or the Plan, the Wind-Down Entity specifically retains and reserves the right to assert, after the Effective Date, any and all of the Vested Causes of Action and related rights, whether or not asserted as of the Effective Date, and all proceeds of the foregoing, subject to the terms of the Plan, including without limitation Article IV.~~EF~~ and Article IV.~~FG~~.

Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, only the Wind-Down Trust and the Wind-Down Trustee shall have the right to pursue or not to pursue, or, subject to the terms hereof and the Wind-Down Trust Agreement, compromise or settle any Wind-Down Trust Assets transferred to the Wind-Down Trust. On and after the Effective Date, the Wind-Down Trust and the Wind-Down Trustee may, without further Bankruptcy Court approval, commence, litigate, and settle any Vested Causes of Action or Claims relating to any Wind-Down Trust Assets transferred to the Wind-Down Trust or rights to payment or Claims that belong to the Debtors as of the Effective Date or are instituted by the Wind-Down Trust or the Wind-Down Trustee on or after the Effective Date, except as otherwise expressly provided herein and in the Wind-Down Trust Agreement. All of the Wind-Down Trust's activities shall be subject to the Wind-Down Reserve and the Non-Released D&O Claim Budget. The Wind-Down Trust shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code.

The Wind-Down Trustee shall be deemed hereby substituted as plaintiff, defendant, or in any other capacity for the Debtors in any Causes of Action pending before the Bankruptcy Court or any other court that relates to a Wind-Down Trust Asset without the need for filing any motion for such relief. On the Effective Date, the Debtors and the Wind-Down Trustee shall execute the Wind-Down Trust Agreement and shall have established the Wind-Down Trust pursuant hereto. In the event of any conflict between the terms of this Article IV.~~GH~~ and the terms of the Wind-Down Trust Agreement, the terms of the Wind-Down Trust Agreement shall control.

2. Wind-Down Entity Assets

Notwithstanding any prohibition on assignability under applicable non-bankruptcy law, on the Effective Date and thereafter if additional Wind-Down Entity Assets become available, the Debtors shall be deemed, subject to the Wind-Down Trust Agreement, to have automatically transferred to the applicable Wind-Down Entity all of their right, title, and interest in and to all of the Wind-Down Trust Assets, in accordance with section 1141 of the Bankruptcy Code. All such assets shall automatically vest in the Wind-Down Entity free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims and Interests as set forth herein and the expenses of the Wind-Down Trust as set forth herein and in the Wind-Down Trust Agreement. Thereupon, the Debtors shall have no interest in or with respect to the Wind-Down Entity Assets or the Wind-Down Trust.

3. Treatment of Wind-Down Trust for Federal Income Tax Purposes; No Successor-in-Interest

The Wind-Down Trust shall be established for the primary purpose of liquidating and distributing the Wind-Down Trust Assets transferred to it, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Wind-Down Trust. Accordingly, the Wind-Down Trustee may, in an expeditious but orderly manner, liquidate the Wind-Down Trust Assets, make timely distributions to the Wind-Down Trust Beneficiaries and not unduly prolong its duration. The Wind-Down Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Wind-Down Trust Agreement. The record holders of beneficial interests shall be recorded and set forth in a register maintained by the Wind-Down Trustee expressly for such purpose.

The Wind-Down Trust is intended to qualify as a “grantor trust” for federal income tax purposes to the extent reasonably practicable, with the Wind-Down Trust Beneficiaries treated as grantors and owners of the Wind-Down Trust. However, with respect to any of the assets of the Wind-Down Trust that are subject to potential disputed claims of ownership or uncertain distributions, *or* to the extent “liquidating trust” treatment is otherwise unavailable, the Debtors anticipate that such assets will be subject to disputed ownership fund treatment under Section 1.468B-9 of the Treasury Regulations, that any appropriate elections with respect thereto shall be made, and that such treatment will also be applied to the extent possible for state and local tax purposes. Under such treatment, a separate federal income tax return shall be filed with the IRS for any such account. Any taxes (including with respect to interest, if any, earned in the account) imposed on such account shall be paid out of the assets of the respective account (and reductions shall be made to amounts disbursed from the account to account for the need to pay such taxes).

4. Appointment of Wind-Down Trustee

The Wind-Down Trustee shall be selected by the Committee, in consultation with the Debtors, and shall be identified in the Plan Supplement. The appointment of the Wind-Down Trustee shall be approved in the Confirmation Order, and the Wind-Down Trustee’s duties shall commence as of the Effective Date. The Wind-Down Trustee shall administer the distributions to the Wind-Down Trust Beneficiaries and shall serve as a representative of the Estates under section 1123(b) of the Bankruptcy Code for the purpose of enforcing Vested Causes of Action belonging to the Estates that are not released, waived, settled, compromised, or transferred pursuant to the Plan and subject to the limitations set forth in the Plan, including Article IV.~~EF~~ and Article IV.~~FG~~.

In accordance with the Wind-Down Trust Agreement, the Wind-Down Trustee shall serve in such capacity through the earlier of (i) the date on which the Wind-Down Trust is dissolved in accordance with the Wind-Down Trust Agreement, and (ii) the date on which a Wind-Down Trustee resigns, is terminated, or is otherwise unable to serve; *provided, however*, that, in the event that a Wind-Down Trustee resigns, is terminated, or is otherwise unable to serve, the Wind-Down Trust Oversight Committee shall appoint a successor to serve as a Wind-Down Trustee in accordance with the Wind-Down Trust Agreement. If the Wind-Down Trust Oversight Committee does not appoint a successor within the time periods specified in the Wind-Down Trust Agreement, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Wind-Down Trust, shall approve a successor to serve as a Wind-Down Trustee.

5. Responsibilities of Wind-Down Trustee

Responsibilities of the Wind-Down Trustee shall be as identified in the Wind-Down Trust Agreement and shall include, but are not limited to:

- (a) Implementing the Wind-Down Trust, and making the distributions contemplated by the Plan;
- (b) Marshalling, marketing for sale, and wind-down of any of the Debtors' assets constituting Wind-Down Trust Assets;
- (c) Filing and prosecuting any objections to Claims or Interests or settling or otherwise compromising such Claims and Interests, if necessary and appropriate, in accordance with the Plan hereof;
- (d) Commencing, prosecuting, or settling claims and Vested Causes of Action;
- (e) Recovering and compelling turnover of the Debtors' property;
- (f) Prosecuting and settling the 3AC Claims, FTX Claims, and Alameda Claims;
- (g) Paying Wind-Down Trust Expenses;
- (h) Abandoning any Debtor assets that cannot be sold or otherwise disposed of for value and where a distribution to Holders of Allowed Claims or Interests would not be feasible or cost-effective in the Wind-Down Trustee's reasonable judgment;
- (i) Preparing and filing post-Effective Date operating reports (including the month in which the Effective Date occurs);
- (j) Filing appropriate tax returns in the exercise of the Wind-Down Trustee's fiduciary obligations;
- (k) Retaining such Professionals as are necessary and appropriate in furtherance of the Wind-Down Trustee's fiduciary obligations; and
- (l) Taking such actions as are necessary and reasonable to carry out the purposes of the Wind-Down Trust, including winding down the Debtors' business affairs.



6. The Wind-Down Trust Oversight Committee

The Wind-Down Trust Oversight Committee shall consist of those parties selected by the Committee and identified in the Plan Supplement, and which, at no time shall consist of greater than seven members.

The Wind-Down Trust Oversight Committee shall have the responsibility to review and advise the Wind-Down Trustee with respect to the liquidation and distribution of the Wind-Down Entity Assets transferred to the Wind-Down Trust in accordance herewith and the Wind-Down Trust Agreement. For the avoidance of doubt, in advising the Wind-Down Trustee, the Wind-Down Trust Oversight Committee shall maintain the same fiduciary responsibilities as the Wind-Down Trustee. Vacancies on the Wind-Down Trust Oversight Committee shall be filled by a Person designated by the remaining member or members of the Wind-Down Trust Oversight Committee from among the Holders of Account Holder Claims. The Wind-Down Trustee shall have the authority to seek an order from the Bankruptcy Court removing or replacing members of the Wind-Down Trust Oversight Committee for cause.

7. Expenses of Wind-Down Trustee

The Wind-Down Trust Expenses shall be paid from the Wind-Down Trust Assets subject to the Wind-Down Reserve and the Non-Released D&O Claim Budget.

8. Insurance; Bond

The Wind-Down Trustee may obtain insurance coverage (in the form of an errors and omissions policy or otherwise) with respect to the liabilities and obligations of the Wind-Down Trustee and the Wind-Down Trust Oversight Committee under the Wind-Down Trust Agreement. Unless otherwise agreed to by the Wind-Down Trust Oversight Committee, the Wind-Down Trustee shall serve with a bond, the terms of which shall be agreed to by the Wind-Down Trust Oversight Committee, and the cost and expense of which shall be paid by the Wind-Down Trust.

9. Fiduciary Duties of the Wind-Down Trustee

Pursuant hereto and the Wind-Down Trust Agreement and the Wind-Down Trustee shall act in a fiduciary capacity on behalf of the interests of all Holders of Claims and Interests that will receive distributions pursuant to Plan.

10. Termination of the Wind-Down Trust

The Wind-Down Trust will terminate on the earlier of: (a) (i) the final liquidation, administration and distribution of the Wind-Down Trust Assets in accordance with the terms of the Wind-Down Trust Agreement and the Plan, and its full performance of all other duties and functions as set forth herein or in the Wind-Down Trust Agreement and (ii) the Chapter 11 Cases of the Debtors have been closed; or (b) the Wind-Down Trustee determines in its reasonable judgment that the Wind-Down Trust lacks sufficient assets and financial resources, after reasonable collection efforts, to complete the duties and powers assigned to him or her under the Plan, the Confirmation Order and/or the Wind-Down Trust Agreement. After (x) the final distributions pursuant hereto, (y) the Filing by or on behalf of the Wind-Down Trust of a certification of dissolution with the Bankruptcy Court, and (z) any other action deemed appropriate by the Wind-Down Trustee, the Wind-Down Trust shall be deemed dissolved for all purposes without the necessity for any other or further actions.



11. Liability of Wind-Down Trustee; Indemnification

Neither the Wind-Down Trustee, the Wind-Down Trust Oversight Committee, their respective members, employees, employers, designees or professionals, or any of their duly designated agents or representatives (each, a “Wind-Down Trust Party” and collectively, the “Wind-Down Trust Parties”) shall be liable for losses, claims, damages, liabilities or expenses in connection with the affairs of the Wind-Down Trust or for the act or omission of any other Wind-Down Trust Party, nor shall the Wind-Down Trust Parties be liable for any act or omission taken or omitted to be taken pursuant to the discretion, powers and authority conferred, or in good faith believed to be conferred by the Wind-Down Trust Agreement or the Plan other than for specific acts or omissions resulting from such Wind-Down Trust Party’s willful misconduct, gross negligence or actual fraud. Subject to the Wind-Down Trust Agreement, the Wind-Down Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee, and the Wind-Down Trust Oversight Committee shall be entitled to enjoy all of the rights, powers, immunities and privileges of an official committee of unsecured creditors. The Wind-Down Trustee or the Wind-Down Trust Oversight Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Wind-Down Trustee nor the Wind-Down Trust Oversight Committee shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Wind-Down Trustee, the Wind-Down Trust Oversight Committee, or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or actual fraud. The Wind-Down Trust shall indemnify and hold harmless the Wind-Down Trust Parties (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys’ fees, disbursements, and related expenses) that such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Wind-Down Trust or the Plan or the discharge of their duties hereunder; *provided, however*, that no such indemnification will be made to such Persons for actions or omissions as a result of willful misconduct, gross negligence, or actual fraud. Persons dealing or having any relationship with the Wind-Down Trustee shall have recourse only to the Wind-Down Trust Assets and shall look only to the Wind-Down Trust Assets to satisfy any liability or other obligations incurred by the Wind-Down Trustee or the Wind-Down Trust Oversight Committee to such Person in carrying out the terms of the Wind-Down Trust Agreement, and neither the Wind-Down Trustee nor the Wind-Down Trust Oversight Committee, shall have any personal obligation to satisfy any such liability. The Wind-Down Trustee and/or the Wind-Down Trust Oversight Committee members shall not be liable whatsoever except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into the Wind-Down Trust Agreement against any of them. The Wind-Down Trust shall promptly pay expenses reasonably incurred by any Wind-Down Trust Party in defending, participating in, or settling any action, proceeding or investigation in which such Wind-Down Trust Party is a party or is threatened to be made a party or otherwise is participating in connection with the Wind-Down Trust Agreement or the duties, acts or omissions of the Wind-Down Trustee or otherwise in connection with the affairs of the Wind-Down Trust, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Wind-Down Trust Party hereby undertakes, and the Wind-Down Trust hereby accepts his or her undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such exculpated party is not entitled to be indemnified therefor under the Wind-Down Trust Agreement. The foregoing indemnity in respect of any Wind-Down

Trust Party shall survive the termination of such Wind-Down Trust Party from the capacity for which they are indemnified.

12. No Liability of the Wind-Down Trust.

On and after the Effective Date, the Wind-Down Trust shall have no liability on account of any Claims or Interests except as set forth herein and in the Wind-Down Trust Agreement. All payments and all distributions made by the Wind-Down Trustee hereunder shall be in exchange for all Claims or Interests against the Debtors.

I. ~~H.~~ **Sources of Consideration for Plan Distributions**

~~The Wind-Down Trust shall fund~~ Distributions under the Plan ~~from the~~ shall be funded by (i) the proceeds of Purchaser's payment obligations under Sections 2.1 and 2.2 of the Asset Purchase Agreement and distributions of Acquired Coins pursuant to Sections 6.12, and 6.14 of the Asset Purchase Agreement, (ii) the Wind-Down Entity or Wind-Down Trust (as applicable) from the Wind-Down Entity Assets or Wind-Down Trust Assets (as applicable); *provided, however*, that Allowed Professional Fee Claims shall be paid from the Professional Fee Escrow Account in the first instance. The Wind-Down Entity Assets or Wind-Down Trust Assets (as applicable) shall be used to pay the Wind-Down ~~Trust~~Entity Expenses (including the compensation of the Wind-Down Trustee and any professionals retained by the Wind-Down Trust), and to satisfy payment of Allowed Claims and Interests as set forth in the Plan.

J. ~~I.~~ **Corporate Existence and Dissolution**

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) in effect prior to the Effective Date, except to the extent such certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) are amended pursuant to the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings under applicable state or federal law).

On and after the Effective Date, the Wind-Down Entity will be authorized and directed to implement the Plan and any applicable orders of the Bankruptcy Court, and the Wind-Down Entity shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

Upon a certification to be Filed with the Bankruptcy Court by the Wind-Down Trustee of all distributions having been made and completion of all of its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Wind-Down Debtors shall be deemed to be dissolved without any further action by the Wind-Down Debtors, including the Filing of any documents with the secretary of state for the state in which the Wind-Down Debtors are formed or any other jurisdiction. The Wind-Down Trustee, however, shall have authority to take all necessary actions to dissolve the Wind-Down Debtors in and withdraw the Wind-Down Debtors from applicable states.

As soon as practicable after the Effective Date, the Wind-Down Entity shall: ~~(1) cause the Debtors to comply with, and abide by, the terms of the Asset Purchase Agreement, and any other documents contemplated thereby; (2) to the extent applicable, file a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Wind-Down Debtors under the applicable laws of their state of incorporation or formation (as applicable); and (3) take such other~~ take such actions as the Wind-Down Entity may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Wind-Down Entity on behalf of any Wind-Down Debtor without need for any action or approval by the shareholders or board of directors or managers of such Debtor. On and after the Effective Date, the Wind-Down Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. Notwithstanding such Debtors' dissolution, such Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

#### K. ~~J.~~ Corporate Action

Upon the Effective Date, all actions contemplated under the Plan, Definitive Documents, and Asset Purchase Agreement shall be deemed authorized and approved in all respects, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, managing-members, limited or general partners, or officers of the Debtors, the Wind-Down Debtors, the Wind-Down Trust or any other Entity, including: (1) appointment of the directors, managers, members, and officers for the Wind-Down Debtors as provided herein; (2) the issuances, transfer, and distribution of the Wind-Down Trust Units; (3) the formation of the Wind-Down Trust and appointment of the Wind-Down Trustee and Wind-Down Trust Oversight Committee; (4) the formation of any entities pursuant to and the implementation of the Plan and performance of all actions and transactions contemplated hereby and thereby; (5) the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; and (6) all other acts or actions contemplated by the Plan, Definitive Documents, and Asset Purchase Agreement or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions (including effectuating the Restructuring Transactions Memorandum and the Customer ~~Migration~~Onboarding Protocol) (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan, Definitive Documents, and Asset Purchase Agreement involving the corporate structure of the Debtors or the Wind-Down Debtors, as applicable, and any corporate action required by the Debtors or the Wind-Down Debtors, as applicable, in connection with the Plan shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Wind-Down Debtors, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Wind-Down Debtors or the Wind-Down Trust, as applicable, shall be authorized and, as applicable, directed to issue, execute,

and deliver the agreements, documents, Securities, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Wind-Down Debtors, and any and all other agreements, documents, Securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Article IV.~~JK~~ shall be effective notwithstanding any requirements under non-bankruptcy law.

**L.** ~~K.~~ **Vesting of Assets in the Wind-Down Entity**

Except as otherwise provided in the Plan, or in any agreement, instrument, or other document incorporated in the Plan, notwithstanding any prohibition of assignability under applicable non-bankruptcy law and in accordance with section 1141 of the Bankruptcy Code, on the Effective Date, all property constituting Wind-Down Trust Assets, including all Vested Causes of Action of the Debtors (unless otherwise released, waived, compromised, settled, transferred, or discharged pursuant to the Plan), and any property acquired by any of the Debtors under the Plan shall vest in the Wind-Down Entity, free and clear of all Liens, Claims, charges, or other encumbrances.

**M.** ~~L.~~ **Cancellation of Notes, Instruments, Certificates, and Other Documents**

On the later of the Effective Date and the date on which distributions are made pursuant to the Plan (if not made on the Effective Date), except for the purpose of evidencing a right to and allowing Holders of Claims and Interests to receive a distribution under the Plan or to the extent otherwise specifically provided for in the Plan, the Confirmation Order, or any agreement, instrument, or other document entered into in connection with or pursuant to the Plan or the Restructuring Transactions (including, without limitation, the Definitive Documents and the Asset Purchase Agreement), all notes, bonds, indentures, certificates, Securities, shares, purchase rights, options, warrants, collateral agreements, subordination agreements, intercreditor agreements, or other instruments or documents directly or indirectly evidencing, creating, or relating to any indebtedness or obligations of, or ownership interest in, the Debtors, giving rise to any Claims against or Interests in the Debtors or to any rights or obligations relating to any Claims against or Interests in the Debtors shall be deemed cancelled without any need for a Holder to take further action with respect thereto.

**N.** ~~M.~~ **Effectuating Documents; Further Transactions**

On and after the Effective Date, the Wind-Down Debtors, and its directors, managers, partners, officers, authorized persons, and members thereof, and the Wind-Down Trust and Wind-Down Trustee are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, Definitive Documents, and Asset Purchase Agreement, in the name of and on behalf of the Wind-Down Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

**O.** ~~N.~~ **Section 1146(a) Exemption**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Wind-Down Debtor, the Wind-Down Trust, the Purchaser, or to any other Entity) of property under the Plan, Definitive Documents, and Asset Purchase Agreement or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Wind-Down Debtors; (2) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or

sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, including the Asset Purchase Agreement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### P. ~~Q.~~ **Preservation of Rights of Action**

In accordance with section 1123(b) of the Bankruptcy Code, the Wind-Down Entity shall succeed to all rights to commence and pursue any and all Vested Causes of Action of the Debtors, whether arising before or after the Petition Date, including, without limitation, any actions specifically enumerated in the Schedule of Retained Causes of Action other than Causes of Action released, waived, settled, compromised, or transferred. Such rights shall be preserved by the Debtors and Wind-Down Debtors and shall vest in the Wind-Down Entity, with the Wind-Down Entity's rights to commence, prosecute, or settle such Causes of Action preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action expressly released, waived, settled, compromised, or transferred by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan or pursuant to the Asset Purchase Agreement, which shall be deemed released and waived by the Debtors and Wind-Down Debtors as of the Effective Date.

The Wind-Down Trust may pursue such Causes of Action, as appropriate, in accordance with the best interests of the beneficiaries of the Wind-Down Trust and in accordance with the Wind-Down Trust Agreement and the Plan. **No Entity may rely on the absence of a specific reference in the Schedules of Assets and Liabilities or Statement of Financial Affairs, the Plan, the Plan Supplement, the Disclosure Statement, or the Schedule of Retained Causes of Action to any Cause of Action against it as any indication that the Debtors, the Wind-Down Debtors or the Wind-Down Trust, as applicable, will not pursue any and all available Causes of Action of the Debtors against it. The Wind-Down Trust, on behalf of the Debtors and the Wind-Down Debtors, expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise provided in the Plan, including Article VIII of the Plan.** Unless any Cause of Action of the Debtors is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or pursuant to a Final Order, the Wind-Down Trust, on behalf of the Debtors and Wind-Down Debtors and in accordance with the Wind-Down Trust Agreement, expressly reserves all such Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation or Consummation.

The Wind-Down Trust, on behalf of the Debtors and Wind-Down Debtors, reserves and shall retain such Causes of Action of the Debtors notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold

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**Q.** ~~**P.**~~ **Election to Contribute Third-Party Claims**

Because aggregating all Contributed Third-Party Claims may enable the pursuit and settlement of such litigation claims in a more efficient and effective manner, each Holder of a Claim or Interest may agree, by electing on its ballot or opt-in form, to contribute its Contributed Third-Party Claims to the Wind-Down Entity. By electing such option on its ballot or opt-in form, each Contributing Claimant agrees that, subject to the occurrence of the Effective Date and the formation of the Wind-Down Entity, it will be deemed, without further action, (i) to have irrevocably contributed its Contributed Third-Party Claims to the Wind-Down Entity, and (ii) to have agreed to execute any documents reasonably requested by the Debtors or the Wind-Down Entity to memorialize and effectuate such contribution.

**R.** ~~**Q.**~~ **Contribution of Contributed Third-Party Claims**

On the Effective Date, all Contributed Third-Party Claims will be irrevocably contributed to the Wind-Down Entity and shall thereafter be Wind-Down Trust Assets for all purposes. No Person may rely on the absence of a specific reference in the Plan, the Disclosure Statement, the Confirmation Order, the Wind-Down Trust Agreement, the Plan Supplement, or any other document as any indication that the Wind-Down Trust will or will not pursue any and all available Contributed Third-Party Claims against such Person. The Wind-Down Trust shall have, retain, reserve, and be entitled to assert all Contributed Third-Party Claims fully to the same extent that the Contributing Claimants could have asserted such claims prior to the Effective Date. For the avoidance of doubt, the Contributed Third-Party Claims shall not include the rights of any of the Contributing Claimants to receive the distributions under the Plan on account of their Claims or Interests.

**S.** ~~**R.**~~ **Closing the Chapter 11 Cases**

On and after the Effective Date, the Wind-Down Entity shall be permitted to classify all of the Chapter 11 Cases of the Debtors except for the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, as closed, and all contested matters relating to any of the Debtors, including objections to Claims or Interests and any adversary proceedings, may be administered and heard in the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, irrespective of whether such Claims or Interests were Filed or such adversary proceeding was commenced against a Debtor whose Chapter 11 Case was closed.

**ARTICLE V.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption and Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale

Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy other than the Side-A Policy. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

**B. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or the Wind-Down Debtors, as applicable, under such Executory Contract or Unexpired Lease. Without limiting the general nature of the foregoing, and notwithstanding any non-bankruptcy law to the contrary, the Debtors and Wind-Down Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to any rejected Executory Contract or Unexpired Lease.

**C. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Counterparties to Executory Contracts or Unexpired Leases listed subject to rejection under the Plan shall be served with a notice of rejection of Executory Contracts and Unexpired Leases with the Plan Supplement. Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Claims, Noticing, and Solicitation Agent and served on the Debtors or Wind-Down Entity, as applicable, no later than thirty days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, or the Wind-Down Entity, the Estates, or their property without the need for any objection by the Wind-Down Entity or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed released, and be subject to the permanent injunction set forth in Article VIII.D of the Plan, including any Claims against any Debtor listed on the Debtors' schedules as unliquidated, contingent, or disputed.** All Allowed Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease shall be treated as General Unsecured Claims in accordance with Article III.C of the Plan.

**D. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed**

The Debtors, the Wind-Down Entity, or the Purchaser, as applicable pursuant to the Asset Purchase Agreement, shall pay Cures, if any, on the Effective Date. The Debtors shall provide notice of the amount and timing of payment of any such Cure to the parties to the applicable assumed Executory Contracts or Unexpired Leases as part of the Plan Supplement. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure that differ from the ordinary course amounts paid or proposed to be paid by the Debtors, the Wind-Down Entity, or the Purchaser shall be dealt with in the ordinary course of business and, if needed, shall be Filed with the Claims, Noticing, and Solicitation Agent on or before thirty days after the Effective Date. **If any counterparty to an Executory Contract or Unexpired Lease does not receive a notice of assumption and applicable cure amount, such counterparty shall have until on or before thirty days after the Effective Date to bring forth and File a request for payment of Cure.** Any such

request that is not timely Filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Wind-Down Debtor or the Wind-Down Entity, without the need for any objection by the Wind-Down Entity or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied, and released upon payment by the Debtors or the Wind-Down Entity or the Purchaser of the Cure in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty); *provided, however*, that nothing herein shall prevent the Wind-Down Entity or the Purchaser, as applicable, from paying any Cure Claim despite the failure of the relevant counterparty to File such request for payment of such Cure. The Wind-Down Entity or the Purchaser may also settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be Filed with the Bankruptcy Court on or before thirty days after the Effective Date. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' first scheduled omnibus hearing for which such objection is timely Filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

In the event of a dispute regarding: (1) the amount of any Cure Claim, (2) the ability of the Wind-Down Debtors, Purchaser, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed (or assumed and assigned, as applicable), or (3) any other matter pertaining to assumption or assignment, then any disputed Cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made as soon as reasonably practicable following, and in accordance with, the entry of a Final Order of the Bankruptcy Court resolving such dispute or as may be agreed upon by the Debtors, the Wind-Down Entity, or Purchaser, as applicable, and the counterparty to the Executory Contract or Unexpired Lease, and any such unresolved dispute shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise or assignment of any Executory Contract or Unexpired Lease to the Purchaser and full payment of any applicable Cure pursuant to this Article V.D, or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty), shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assumed and assigned in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure has been fully paid pursuant to this Article V.D, in the amount and at the time in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty), shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, in the event that any counterparty to an Executory Contract or Unexpired Lease receives a notice of assumption and applicable proposed Cure amount, and disputes the Debtors' proposed Cure amount, such party shall not be required to File a Proof of Claim with respect to such dispute. Any counterparty to an Executory Contract or Unexpired Lease that does not receive a notice or applicable proposed Cure amount, and believes a Cure amount is owed, shall have thirty**

**days after the Effective Date to File a Proof of Claim with respect to such alleged Cure amount, which Claim shall not be expunged until such Cure dispute is resolved.**

**E. Insurance Policies and Surety Bonds**

Each D&O Liability Insurance Policy (including, without limitation, any “tail policy” and all agreements, documents, or instruments related thereto) other than the Side-A Policy shall be assumed, in their entirety, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date, pursuant to sections 105 and 365 of the Bankruptcy Code with the Wind-Down Entity being authorized to pursue any proceeds thereof on behalf of the Debtors or the Wind-Down Entity. The Side-A Policy shall ride through these Chapter 11 Cases with the Debtors, and the Wind-Down Entity preserves all avoidance and other actions in connection with the premium paid thereunder. All beneficiaries under the D&O Insurance Policies reserve their rights under such D&O Insurance Policies subject to the limitations set forth in this Plan.

The Debtors or the Wind-Down Entity, as applicable, shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policy (including, without limitation, any “tail policy” and all agreements, documents, or instruments related thereto) in effect prior to the Effective Date, and any current and former directors, officers, managers, and employees of the Debtors who served in such capacity at any time before or after the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy subject to the terms thereof regardless of whether such directors, officers, managers, and employees remain in such positions after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Debtors or the Wind-Down Entity shall retain the ability to supplement such D&O Liability Insurance Policy as the Debtors or Wind-Down Entity may deem necessary, subject to the prior written consent of the Wind-Down Entity. Notwithstanding anything to the contrary contained in the Plan, the Wind-Down Trust shall be entitled to pursue avoidance of the premium paid for the XL Specialty Insurance Company Cornerstone A-Side Management Liability Insurance Policy No. ELU184179-22, and nothing in this Plan shall be deemed a waiver or abrogation of any such rights.

The Debtors shall continue to satisfy their obligations under their surety bonds and insurance policies in full and continue such programs in the ordinary course of business. Each of the Debtors’ surety bonds and insurance policies, and any agreements, documents, or instruments relating thereto shall be treated as Executory Contracts under the Plan. On the Effective Date: (a) the Debtors shall be deemed to have assumed all such surety bonds and insurance policies and any agreements, documents, and instruments relating thereto in their entirety; *provided* that the Debtors have assumed all indemnity agreements and cash collateral agreements related to the surety bonds and (b) such surety bonds and insurance policies and any agreements, documents, or instruments relating thereto shall revert in the applicable Wind-Down Debtor(s) unaltered.

**F. Reservation of Rights**

Nothing contained in the Plan or the Plan Supplement (unless otherwise explicitly provided) shall constitute an admission by the Debtors or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Wind-Down Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Wind-Down Entity, as applicable, shall have forty-five days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease, including by rejecting such contract or lease effective as of the Confirmation Date.

**G. Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**H. Contracts and Leases Entered into After the Petition Date**

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed under section 365 of the Bankruptcy Code, will be performed by the applicable Debtor or Wind-Down Debtor liable thereunder in the ordinary course of its business. Such contracts and leases that are not rejected under the Plan shall survive and remain unaffected by entry of the Confirmation Order.

**ARTICLE VI.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Timing and Calculation of Amounts to Be Distributed**

Except (1) as otherwise provided herein, (2) upon a Final Order, or (3) as otherwise agreed to by the Debtors, the Purchaser, or the Wind-Down Entity, as the case may be, and the Holder of the applicable Claim, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the next Distribution Date after such Claim becomes, as applicable, an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim shall receive the full amount of distributions that the Plan provides for Allowed Claims in the applicable Class from the Distribution Agent. In the event that any payment or distribution under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or distribution may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as specifically provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

**B. Rights and Powers of Distribution Agent**

1. Powers of the Distribution Agent

The Distribution Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties and exercise its rights under the Plan; (b) make all distributions contemplated under the Plan; (c) employ professionals to represent it with respect to its responsibilities and powers; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

2. Expenses Incurred on or after the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Distribution Agent on or after the Effective Date and any reasonable compensation and expense reimbursement claims (including reasonable attorney and/or other



professional fees and expenses) made by such Distribution Agent shall be paid in Cash by the Wind-Down Entity.

**C. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

1. Distributions Generally

Except as otherwise provided in the Plan (including in paragraph 8 below), the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the applicable register or in the Debtors' records as of the date of any such distribution (as applicable), including the address set forth in any Proof of Claim filed by that Holder.

2. Distributions on Account of Obligations of Multiple Debtors

For all purposes associated with distributions under the Plan, all guarantees by any Debtor of the obligations of any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be deemed eliminated so that any obligation that could otherwise be asserted against more than one Debtor shall result in a single distribution under the Plan. Any such Claims shall be subject to all potential objections, defenses, and counterclaims, and to estimation pursuant to section 502(c) of the Bankruptcy Code.

3. Record Date of Distributions

On the Distribution Record Date, the various transfer registers for each Class of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes in the record Holders of any Claims or Interests. The Distribution Agent shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date. In addition, with respect to payment of any Cure amounts or disputes over any Cure amounts, neither the Debtors nor the Distribution Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable Executory Contract or Unexpired Lease as of the Effective Date, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure amount.

4. Special Rules for Distributions to Holders of Disputed Claims and Interests

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the Wind-Down Entity, on the one hand, and the Holder of a Disputed Claim or Interest, on the other hand, or as set forth in a Final Order, no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Interest until all of the Disputed Claim or Interest has become an Allowed Claim or Interest or has otherwise been resolved by settlement or Final Order; *provided that*, if the Wind-Down Entity does not dispute a portion of an amount asserted pursuant to an otherwise Disputed Claim or Interest, the Distribution Agent may make a partial distribution on account of that portion of such Claim or Interest that is not Disputed at the time and in the manner that the Distribution Agent makes distributions to similarly situated Holders of Allowed Claims or Interests pursuant to the Plan. Any dividends or other distributions arising from property distributed to Holders of Allowed Claims or Interests, as applicable, in a Class and paid to such Holders under the Plan shall also be paid, in the applicable amounts, to any Holder of a Disputed Claim or Interest, as applicable, in such Class that becomes an Allowed Claim or Interest after the date or dates that such dividends or other distributions were earlier paid to Holders of Allowed Claims or Interests in such Class.



5. De Minimis Distributions; Minimum Distributions

The Distribution Agent shall not make any Cash distributions to any Holder of an Allowed Claim or Interest pursuant to Article III.C.1-11 of this Plan on account of such Allowed Claim or Interest if such distribution is valued, in the reasonable discretion of the Distribution Agent, at less than \$1.00, and each Holder of an Allowed Claim or Interest to which this limitation applies shall not be entitled to any distributions under the Plan. Notwithstanding anything to the contrary in this Plan, there shall be no minimum distribution threshold on account of distributions of any Cryptocurrency to Holders of Allowed Account Holder Claims and Allowed OpCo General Unsecured Claims.

6. Undeliverable Distributions and Unclaimed Property

In the event that either (a) a distribution to any Holder is returned as undeliverable or (b) the Holder of an Allowed Claim or Interest does not respond to a request by the Debtors or the Distribution Agent for information necessary to facilitate a particular distribution, no distribution to such Holder shall be made unless and until the Distribution Agent has determined the then-current address of such Holder or received the necessary information to facilitate a particular distribution, at which time such distribution shall be made to such Holder without interest, dividends, or other accruals of any kind; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code on the date that is one year after the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Wind-Down Entity automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable local, state, federal, or foreign escheat, abandoned, or unclaimed property laws to the contrary), and the Claim or Interest of any Holder to such property or interest in property shall not be entitled to any distributions under the Plan.

7. Manner of Payment Pursuant to the Plan

At the option of the Distribution Agent, any Cash payment to be made hereunder may be made by check, wire transfer, automated clearing house, credit card, or as otherwise provided in applicable agreements.

8. ~~Transferred Cryptocurrency Value~~ Distributions of Net Owed Coins; Additional Bankruptcy Distributions

~~The Transferred Cryptocurrency Value will be determined prior to the Effective Date pursuant to the Asset Purchase Agreement.~~

As a general matter, the Purchaser will allocate each Account Holder's Net Owed Coins to its account on the Binance.US Platform, and each Holder of OpCo General Unsecured Claim's Pro Rata share of the Distributable Cryptocurrency (in Cash) to its account on the Binance.US Platform in accordance with, and subject to, the provisions of Section 6.12 of the Asset Purchase Agreement.

As a general matter, the Customer Migration Onboarding Protocol will provide that Purchaser will make initial Additional Bankruptcy distributions to Transferred Creditors corresponding to their Pro Rata ~~amounts of the Transferred Cryptocurrency Value as contemplated in the Customer Migration Protocol. Subject to the conditions set forth in the Customer Migration Protocol, if a Transferred Creditor has become a Transferred Creditor prior to one Business Day prior to the Closing Date and Purchaser supports the Cryptocurrency maintained by such Transferred Creditor in such Transferred Creditor's Account (e.g., BTC, ETH), Purchaser will credit to such Transferred Creditor's FTX Account~~ shares of such Additional Bankruptcy Distribution (if such Additional Bankruptcy Distribution is in Cryptocurrency, based on the Transferred Cryptocurrency Value ~~in kind. Subject to the conditions~~

~~set forth in the Customer Migration Protocol, if (i) Purchaser does not support~~of the Cryptocurrency maintained by a Transferred Creditor in such Transferred Creditor's Account, (ii) a Transferred Creditor did not maintain Cryptocurrency in an Account or (iii) a Transferred Creditor becomes a Transferred Creditor after such date but before the final cut off date 45 days after the Closing Date as contemplated in the Customer Migration Protocol, Purchaser will credit to the FTX Account of such Transferred Creditor USDC in an amount equal to the Transferred Cryptocurrency Value on a Pro Rata basis included in such Additional Bankruptcy Distribution), all in accordance with any applicable Post-Bankruptcy Statement (as defined in the Asset Purchase Agreement).

~~Following such initial distributions to Transferred Creditors, the remaining Cash available on account of the sale of Cryptocurrency to Purchaser under the Asset Purchase Agreement shall be paid by Purchaser to the Debtors and applied by the Debtors to make initial distributions of Transferred Cryptocurrency Value to Holders of Allowed Account Holder Claims and Allowed OpCo General Unsecured Claims that did not become Transferred Creditors by the cut off date provided in the Customer Migration Protocol.~~

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim does not become a Transferred Creditor prior to the date that is three (3) months following the later of the Closing Date or the date on which the terms and conditions for the Binance.US Platform are made available for such Person to accept (as provided in the Customer Onboarding Protocol), then Purchaser shall convert any Cryptocurrency allocable to such Person into U.S. Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such U.S. Dollars, together with any cash or others assets in respect of such Persons, to the Debtors within five (5) Business Days, for further distribution by the Debtors in accordance with this Plan and the Customer Onboarding Protocol.

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim is located in an Unsupported Jurisdiction (as defined in the Asset Purchase Agreement), then the Net Owed Coins, if applicable, and Additional Bankruptcy Distributions allocable to such Person shall be handled pursuant to Section 6.12(b) or, if applicable, Section 6.14(d) of the Asset Purchase Agreement.

~~Purchaser shall have no responsibility to make any distributions other than the distributions to Transferred Creditors of their Pro Rata share of Transferred Cryptocurrency Value as contemplated by the Customer Migration Protocol. All other distributions shall be made by the Distribution Agent (other than Purchaser) or as the Distribution Agent (other than Purchaser) shall otherwise determine.~~Sections 6.12 and 6.14 of the Asset Purchase Agreement.

#### **D. Compliance Matters**

In connection with the Plan, to the extent applicable, the Debtors, the Wind-Down Entity, any Distribution Agent, and any other applicable withholding and reporting agents shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Wind-Down Entity, the Distribution Agent, and any other applicable withholding and reporting agents shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including wind-down a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms that are reasonable and appropriate; *provided* that the Wind-Down Entity and the Distribution Agent, as applicable, shall request appropriate documentation from the applicable distributees and allow such distributees a reasonable amount of time

to respond. The Debtors, the Wind-Down Entity, the Distribution Agent, and any other applicable withholding and reporting agents reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

#### **E. Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim, asserted in government issued currency (for the avoidance of doubt, not including any Cryptocurrency) other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

#### **F. Claims Paid or Payable by Third Parties**

##### **1. Claims Paid by Third Parties**

The Debtors or the Wind-Down Entity, as applicable, shall reduce a Claim or Interest, and such Claim or Interest (or portion thereof) shall be disallowed without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim or Interest receives a payment on account of such Claim or Interest from a party that is not a Debtor or Wind-Down Debtor (or other Distribution Agent), as applicable, including any payments made in connection with the Sale Transaction. To the extent a Holder of a Claim or Interest receives a distribution on account of such Claim or Interest and receives payment from a party that is not a Debtor or a Wind-Down Debtor (or other Distribution Agent), including payments made in connection with the Sale Transaction, as applicable, on account of such Claim or Interest, such Holder shall, within ten Business Days of receipt thereof, repay, return, or deliver any distribution held by or transferred to the Holder to the applicable Wind-Down Debtor to the extent the Holder's total recovery on account of such Claim or Interest from the third party and under the Plan exceeds the amount of such Claim or Interest as of the date of any such distribution under the Plan. The failure of such Holder to timely repay, return, or deliver such distribution shall result in the Holder owing the applicable Wind-Down Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the ten-Business Day grace period specified above until the amount is repaid.

##### **2. Claims Payable by Third Parties**

No distributions under the Plan shall be made on account of an Allowed Claim or Interest that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim or Interest has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim or Interest (if and to the extent adjudicated by a court of competent jurisdiction or otherwise settled), then immediately upon such payment, such Claim or Interest may be expunged or reduced on the Claims Register by the Claims, Noticing, and Solicitation Agent to the extent of any such payment without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

### 3. Applicability of Insurance Policies

Except as otherwise provided herein, payments to Holders of Claims or Interests shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any rights, defenses, or Cause of Action that the Debtors, the Wind-Down Entity or any other Entity may hold against any other Entity, including insurers, under any policies of insurance, agreements related thereto, or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers under the applicable insurance policies, agreements related thereto, and applicable non-bankruptcy law.

### **G. Setoffs and Recoupment**

Except as otherwise expressly provided for herein, each Debtor, Wind-Down Debtor, the Wind-Down Entity, or such Entity's designee as instructed by such Debtor, Wind-Down Entity, as applicable, may, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, set off against or recoup from an Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature whatsoever that the Debtor, Wind-Down Debtor or Wind-Down Entity, as applicable, may have against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised, settled, or released on or prior to the Effective Date (whether pursuant to the Plan or otherwise). Notwithstanding the foregoing, except as expressly stated in Article VIII of this Plan, neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Debtors or the Wind-Down Entity of any such Claims, rights, or Causes of Action the Debtors or the Wind-Down Entity may possess against such Holder.

### **H. Allocation between Principal and Accrued Interest**

Except as otherwise provided herein, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof and as determined for federal income tax purposes) and second, to the extent the consideration exceeds the principal amount of the Allowed Claims, to the remaining portion of such Allowed Claim if any.

## **ARTICLE VII.**

### **PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS AND INTERESTS**

#### **A. Disputed Claims Process**

After the Effective Date, the Wind-Down Entity, and any party-in-interest, shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim or Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim or Interest. If a Holder of a Claim or Interest in Class disputes the amount of their Claim or Interest as listed in the Schedules, the Holder should notify the Debtors or the Wind-Down Entity of such

dispute. If the Debtors and the Holder agree to an amended Claim amount prior to the Effective Date, the Debtors shall file amended Schedules prior to the Effective Date. If between the Confirmation Date and the Effective Date, the dispute cannot be consensually resolved, the Holder may seek (by letter to the Court) to have the claim or interest dispute resolved before the Bankruptcy Court (and, with the consent of the Debtors, before any other court or tribunal with jurisdiction over the parties). After the Effective Date, the creditor may seek to have the claim dispute resolved before the Bankruptcy Court or any other court or tribunal with jurisdiction over the parties.

Unless relating to a Claim or Interest expressly Allowed pursuant to the Plan, all Proofs of Claim filed in these Chapter 11 Cases shall be considered objected to and Disputed without further action by the Debtors. Upon the Effective Date, all Proofs of Claim filed against the Debtors, regardless of the time of filing, and including Proofs of Claim filed after the Effective Date, shall be deemed withdrawn and expunged, other than as provided below. Notwithstanding anything in this Plan to the contrary: (1) all Claims against the Debtors that result from the Debtors' rejection of an Executory Contract or Unexpired Lease; (2) Claims filed to dispute the amount of any proposed Cure pursuant to section 365 of the Bankruptcy Code; and (3) Claims that the Debtors seek to have determined by the Bankruptcy Court, shall in all cases be determined by the Bankruptcy Court, if not otherwise resolved through settlement with the applicable claimant.

Notwithstanding any provision herein to the contrary, nothing in the Disclosure Statement, Plan, or Confirmation Order grants the Bankruptcy Court with jurisdiction over any police and regulatory actions by the SEC, and the SEC shall retain the power and authority to commence and continue any such actions against any person or entity, including without limitation, the Debtors, in any forum with jurisdiction, provided, however, that enforcement of any money judgment against the Debtors must be in accordance with the Plan. In addition, the SEC may file any proof of claim by the Government Bar Date or such later date as ordered by the Bankruptcy Court and amend its proof of claim upon determination of liability on its claims. Any objection to such claim shall be in accordance with Bankruptcy Rule 3007, and such claim shall not automatically be deemed objected to, withdrawn, or expunged.

On the Effective Date, the Debtors or Wind-Down Trustee, as applicable, may establish one or more accounts or funds to hold and dispose of certain assets, pursue certain litigation (including the Causes of Action preserved under the Plan or otherwise vesting in the Wind-Down Trust), and/or satisfy certain Claims (including Claims that are contingent or have not yet been Allowed). For any such account or fund, the Debtors or the Wind-Down Trustee, as applicable, may take the position that grantor trust treatment applies in whole or in part. To the extent such treatment applies to any such account or fund, for all U.S. federal income tax purposes, the beneficiaries of any such account or fund would be treated as grantors and owners thereof, and it is intended, to the extent reasonably practicable, that any such account or fund would be classified as a liquidating trust under section 301.7701-4 of the Treasury Regulations. Alternatively, any such account or fund may be subject to the tax rules that apply to "disputed ownership funds" under 26 C.F.R. 1.468B-9. If such rules apply, such assets would be subject to entity-level taxation, and the Debtors and Wind-Down Trustee would be required to comply with the relevant rules.

## **B. Objections to Claims or Interests**

Except as otherwise specifically provided in the Plan, after the Effective Date, the Wind-Down Entity shall have the sole authority to: (1) File, withdraw, or litigate to judgment, any objections to Claims or Interests; and (2) settle or compromise any Disputed Claim or Interest without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, the Wind-Down Entity shall have and retain any and all rights and defenses each such Debtor had immediately prior to the Effective Date with



respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to ~~Article IV.O~~ Article IV.P of the Plan.

Any objections to Claims or Interests shall be Filed on or before the Claims Objection Bar Date. For the avoidance of doubt, the Bankruptcy Court may extend the time period to object to Claims or Interests set forth in this paragraph at any time, including before or after the expiration of one hundred eighty days after the Effective Date, in its discretion or upon request by the Debtors or any party in interest.

### **C. Estimation of Claims**

Before or after the Effective Date, the Debtors or the Wind-Down Entity, as applicable, may (but are not required to), at any time, request that the Bankruptcy Court estimate any Disputed Claim or Interest that is contingent or unliquidated pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any party previously has objected to such Disputed Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under sections 157 and 1334 of the Judicial Code to estimate any such Disputed Claim or Interest, including during the litigation of any objection to any Disputed Claim or Interest or during the pendency of any appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Disputed Claim or Interest that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions) and may be used as evidence in any supplemental proceedings, and the Debtors or the Wind-Down Entity may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Disputed Claim or Interest that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen days after the date on which such Disputed Claim or Interest is estimated.

### **D. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, if any portion of a Claim or Interest is a Disputed Claim or Interest, no payment or distribution provided hereunder shall be made on account of such Claim or Interest unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest; *provided* that if only a portion of a Claim or Interest is Disputed, such Claim or Interest shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account of such undisputed amount.

### **E. Distributions After Allowance**

To the extent that a Disputed Claim or Interest ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim or Interest in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court Allowing any Disputed Claim or Interest becomes a Final Order, the Distribution Agent shall provide to the Holder of such Allowed Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or



accruals to be paid on account of such Allowed Claim or Interest unless required under applicable bankruptcy law.

**F. No Interest**

Unless otherwise specifically provided for herein or by Final Order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims against the Debtors, and no Holder of a Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

**G. Adjustment to Claims and Interests without Objection**

Any Claim or Interest that has been paid, satisfied, amended, superseded, cancelled, or otherwise expunged (including pursuant to the Plan) may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Entity without the Wind-Down Entity having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court. Additionally, any Claim or Interest that is duplicative or redundant with another Claim or Interest against the same Debtor may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Entity without the Wind-Down Entity having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

**H. Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date.

**I. Disallowance of Claims or Interests**

Any Claims or Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors or the Wind-Down Entity, as applicable.

**Except as otherwise provided herein or as agreed to by the Debtors or the Wind-Down Entity, any and all Proofs of Claim Filed after the Bar Date shall be deemed disallowed and expunged as of the Effective Date without any further notice to, or action, order, or approval of, the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.**

**J. Amendments to Proofs of Claim**

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Proof of Claim or Proof of Interest may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Wind-Down Entity, and any such new or amended Proof of Claim or Proof of

Interest Filed shall be deemed disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court.

## ARTICLE VIII.

### EFFECT OF CONFIRMATION OF THE PLAN

#### A. Releases by the Debtors

Notwithstanding anything contained in the Plan to the contrary, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Debtors, the Wind-Down Debtors, and their Estates, the Wind-Down Entity, and in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of, the foregoing Entities, from any and all Causes of Action, including any derivative claims, asserted or assertable on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, that the Debtors would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Chapter 11 Cases and related adversary proceedings, the ~~Alameda Loan Facility, the~~ Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date; *provided* that, subject to the D&O Settlement, nothing in this Article VIII.A shall be construed to release the Released Parties from actual fraud, willful misconduct, or gross negligence as determined by a Final Order.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, of the releases described in this Article VIII.A by the Debtors, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.A is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to the extent contemplated by Article IV.E and Article IV.F of the Plan, a bar to any of the Debtors or Wind-Down Debtors or their respective Estates or Wind-Down Entity asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

Notwithstanding anything to the contrary contained herein, nothing in this Plan shall release, waive, or otherwise limit the (i) rights, duties, or obligations of the Purchaser under the Asset Purchase Agreement or the Definitive Documents and (ii) the Non-Released D&O Claims, but such Non-Released D&O Claims shall remain subject to the limitations contained in Article IV.E and Article IV.F of this Plan.

#### B. Releases by Holders of Claims and Interests

Except as expressly set forth in the Plan, effective on the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action, from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of any of the Debtors, that such Entity would have been legally entitled to assert in its own right (whether individually or collectively or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the ~~Alameda Loan Facility, the~~ Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions, or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date, *provided* that nothing in this Article VIII.B shall be construed to release the Released Parties from actual fraud, willful misconduct, or gross negligence as determined by a Final Order.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Article VIII.B, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.B is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to the extent contemplated by Article IV.~~EF~~ and Article IV.~~FG~~ of the Plan, a bar to any of the Releasing Parties or the Debtors or Wind-Down Debtors or their respective Estates or Wind-Down Entity asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

#### C. Exculpation

Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor release or the third-party release, and except as

otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is exculpated from any Cause of Action for any act or omission arising on or after the Petition Date and prior to the Effective Date based on the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation or filing, or consummation of the Disclosure Statement, the Plan, the Special Committee Investigation, any Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), except for Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan

#### **D. Injunction**

The assets of the Debtors and of the Wind-Down Entity shall be used for the satisfaction of expense obligations and the payment of Claims and Interests only in the manner set forth in this Plan and shall not be available for any other purpose. All Persons and Entities who have held, hold, or may hold Claims or Interests based upon any act, omission, transaction, or other activity of any kind or nature related to the Debtors, the Wind-Down Entity, or the Debtors' Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in the Plan or the Confirmation Order, shall be precluded and permanently enjoined on and after the Effective Date from interfering with the use and distribution of the Debtors' assets in the manner contemplated by the Plan.

In addition, as of the Effective Date and subject to the occurrence of the Effective Date, except as otherwise specifically provided in this Plan or the Confirmation Order, all Persons and Entities who have held, hold, or may hold Claims or Interests that are fully satisfied pursuant to the Plan or any Claim or Interest that is subject to the releases and exculpations set forth in Article VIII.B and Article VIII.C of this Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims or Interests, except for the receipt of the payments or distributions that are contemplated by this Plan.

#### **E. Release of Liens**

Except as otherwise provided in the Plan, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan or Confirmation Order on the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, all

mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, ~~and~~ compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or Wind-Down Debtor, as applicable, and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as requested by the Debtors or Wind-Down Entity to evidence the release of such Lien, including the execution, delivery, and filing or recording of such documents evidencing such releases. The presentation or filing of the Confirmation Order to or with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

#### **F. OSC and SEC**

Notwithstanding any language to the contrary herein, no provision shall (a) preclude the OSC or the SEC from enforcing its police or regulatory powers; or (b) enjoin, limit, impair or delay the OSC or SEC from commencing or continuing any claims, causes of action, proceeding, or investigations against any non-Debtor person or non-Debtor entity in any forum.

#### **G. Protection against Discriminatory Treatment**

As provided by section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Entity, including Governmental Units, shall discriminate against any Wind-Down Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, any Wind-Down Debtor, or any Entity with which a Wind-Down Debtor has been or is associated, solely because such Wind-Down Debtor was a debtor under chapter 11 of the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

#### **H. Document Retention**

Upon the occurrence of the Effective Date, the Debtors' books and records shall be transferred to the Wind-Down Entity, which shall continue to preserve all financial books and records, emails, and other financial documents relating to the Debtors' business that are currently in the Debtors' possession. The Wind-Down Trust shall not destroy or otherwise abandon any such documents or records without providing advance notice to the U.S. Securities and Exchange Commission (c/o Therese Scheuer, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, ScheuerT@SEC.GOV) and seeking further authorization from this Court. Nothing in this Plan or the Confirmation Order shall affect the obligations of the pre-Effective Date Debtors, the Wind-Down Entity, and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

#### **I. Reimbursement or Contribution**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent



as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

#### **J. Term of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code, or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. **All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.**

### **ARTICLE IX.**

#### **CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

##### **A. Conditions Precedent to the Effective Date.**

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Article IX.B of the Plan:

1. The Bankruptcy Court shall have entered the Confirmation Order, which shall be in a form and substance reasonably satisfactory to the Debtors and the Committee, and subject to the consent rights of Purchaser under the Asset Purchase Agreement, and such order shall be a Final Order and in full force and effect.
2. The Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan, Definitive Documents, and the Asset Purchase Agreement.
3. Each Definitive Document and each other document contained in any supplement to the Plan, including the Plan Supplement and any exhibits, schedules, amendments, modifications or supplements thereto or other documents contained therein, shall have been executed or Filed, as applicable, in form and substance consistent in all respects with the Plan, and subject to the Purchaser's consent rights under the Asset Purchase Agreement, and shall not have been modified in a manner inconsistent therewith;
4. The Professional Fee Escrow Account shall have been established and funded with Cash in accordance with Article II.B.2 of the Plan.
5. The Wind-Down Reserve shall have been established and funded with Cash in accordance with the Plan.
6. ~~The~~ If prior to the Outside Date, the Asset Purchase Agreement shall be in full force and effect and the Sale Transaction shall have been consummated.
7. The Restructuring Transactions shall have been consummated or shall be anticipated to be consummated concurrently with the occurrence of the Effective Date in a manner consistent



with the Plan ~~and~~ the Customer ~~Migration~~ Onboarding Protocol, the other Definitive Documents, and the Asset Purchase Agreement, and the Plan shall have been substantially consummated or shall be anticipated to be substantially consummated concurrently with the occurrence of the Effective Date.

**B. Waiver of Conditions Precedent**

The Debtors, with the consent of the Committee and, solely to the extent related to the Asset Purchase Agreement and the Sale Transaction, prior to the Outside Date, the consent of Purchaser, may waive any of the conditions to the Effective Date set forth in Article IX.A of the Plan at any time, without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan.

**C. Effect of Non-Occurrence of Conditions to Consummation**

If the Effective Date does not occur within 120 days after the Confirmation Date, then the Plan will be null and void in all respects, any and all compromises or settlements not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including with respect to the fixing, limiting, or treatment of any Claim or Interest, including, without limitation, the Alameda Loan Facility Claims), shall be deemed null and void, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims, Interests, or Causes of Action held by any Debtor or any other Entity; (2) prejudice in any manner the rights of any Debtor or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity in any respect.

**ARTICLE X.**

**MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

**A. Modification of Plan**

Subject to the limitations and terms contained in the Plan and Purchaser's consent rights under the Asset Purchase Agreement, the Debtors, with the consent of the Committee, reserve the right to (1) amend or modify the Plan before the entry of the Confirmation Order, in accordance with the Bankruptcy Code and the Bankruptcy Rules and (2) after the entry of the Confirmation Order, the Debtors or the Wind-Down Entity, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein.

**B. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall constitute approval of all modifications or amendments to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

### **C. Revocation or Withdrawal of Plan**

The Debtors reserve the right, with the consent of the Committee, to revoke or withdraw the Plan with respect to any or all Debtors before the Confirmation Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (1) the Plan will be null and void in all respects; (2) any settlement or compromise not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Classes of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effectuated by the Plan, and any document or agreement executed pursuant to the Plan will be null and void in all respects; and (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity, (b) prejudice in any manner the rights of any Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

## **ARTICLE XI.**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
3. resolve any matters related to Executory Contracts or Unexpired Leases, including:  
(a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Claims or other Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed or assumed and assigned; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;
4. ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;
5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor or the Estates that may be pending on the Effective Date;
6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order,

and contracts, instruments, releases, and other agreements or documents created in connection with the Plan; *provided* that the Bankruptcy Court shall not retain jurisdiction over disputes concerning documents contained in the Plan Supplement that have a jurisdictional, forum selection, or dispute resolution clause that refers disputes to a different court;

7. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or an Interest for amounts not timely repaid pursuant to Article VI of the Plan; (b) with respect to the releases, injunctions, and other provisions contained in Article VIII of the Plan, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) anything that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan and the Confirmation Order; or (d) related to section 1141 of the Bankruptcy Code;

11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

13. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

14. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases with respect to any Entity, and resolve any cases, controversies, suits, or disputes that may arise in connection with any Entity's rights arising from or obligations incurred in connection with the Plan;

15. hear and determine matters concerning local, state, federal, and foreign taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

16. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

17. enforce all orders previously entered by the Bankruptcy Court; and

18. hear and determine any other matters related to the Chapter 11 Cases and not inconsistent with the Bankruptcy Code or the Judicial Code.

Nothing herein limits the jurisdiction of the Bankruptcy Court to interpret and enforce the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, or the Disclosure Statement, without regard to whether the controversy with respect to which

such interpretation or enforcement relates may be pending in any state or other federal court of competent jurisdiction.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article XI, the provisions of this Article XI shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

Unless otherwise specifically provided herein or in a prior order of the Bankruptcy Court, the Bankruptcy Court shall have exclusive jurisdiction to hear and determine disputes concerning Claims against or Interests in the Debtors that arose prior to the Effective Date.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Entity, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, exculpations, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or Interest has voted on the Plan.

#### **B. Additional Documents**

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Wind-Down Entity, and all Holders of Claims and Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### **C. Payment of Statutory Fees**

All fees and applicable interest payable pursuant to section 1930 of the Judicial Code and 31 U.S.C. § 3717, as applicable, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by each of the Wind-Down Debtors (or the Distribution Agent on behalf of the Wind-Down Entity) for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first.

#### **D. Dissolution of Statutory Committees**

On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases; *provided*, however, that such committees will remain in existence for

the limited purposes of (a) pursuing, supporting, or otherwise participating in, any outstanding appeals in the Chapter 11 Cases; and (b) filing, objecting, or otherwise participating in, any final fee applications of Professionals.

#### **E. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests, unless and until the Effective Date has occurred.

#### **F. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of each such Entity.

#### **G. Service of Documents**

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Wind-Down Debtors shall be served on:

Wind-Down Debtors

**Voyager Digital Holdings, Inc.**

33 Irving Place  
New York, New York 10003  
Attention: David Brosgol  
General Counsel,  
E-mail address: dbrosgol@investvoyager.com

with copies for information only (which shall not constitute notice) to:

Counsel to the Debtors

**Kirkland & Ellis LLP**

**Kirkland & Ellis International LLP**

601 Lexington Avenue  
New York, New York 10022  
Attention: Joshua A. Sussberg, P.C., Christopher Marcus,  
P.C., Christine A. Okike, P.C., and Allyson B. Smith

Counsel to the Committee

**McDermott Will & Emery LLP**

One Vanderbilt Avenue  
New York, New York 10017  
Attention: Darren Azman

#### **H. Entire Agreement; Controlling Document**

Except as otherwise indicated, on the Effective Date, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations

with respect to the subject matter of the Plan, all of which will have become merged and integrated into the Plan; provided, however, that notwithstanding the foregoing or anything to the contrary herein, to the extent there is any conflict between the Plan and the Confirmation Order, on the one hand, and the Asset Purchase Agreement, on the other hand, the Asset Purchase Agreement shall govern solely in the event the Sale Transaction is consummated. Except as set forth in the Plan, in the event that any provision of the Disclosure Statement, the Plan Supplement, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

#### **I. Plan Supplement**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Claims, Noticing, and Solicitation Agent at <https://cases.stretto.com/Voyager> or the Bankruptcy Court's website at <http://www.nysb.uscourts.gov>. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

#### **J. Non-Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, subject to the Purchaser's consent rights under the Asset Purchase Agreement prior to the Outside Date, shall have the power to alter and interpret such term or provision to make it valid or enforceable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' consent, consistent with the terms set forth herein; and (3) non-severable and mutually dependent.

#### **K. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors, and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties nor individuals or the Wind-Down Debtors will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan or any previous plan.



**L. Waiver or Estoppel**

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed prior to the Confirmation Date.

Dated: ~~October~~December 24<sup>1</sup>, 2022

VOYAGER DIGITAL HOLDINGS, INC.  
on behalf of itself and all other Debtors

/s/ Stephen Ehrlich

Stephen Ehrlich  
Co-Founder and Chief Executive Officer  
Voyager Digital Holdings, Inc.

Summary report: Litera Compare for Word 11.2.0.54 Document comparison done on 12/21/2022 11:38:32 PM	
Style name: Color (Kirkland Default)	
Intelligent Table Comparison: Active	
Original DMS: iw://dms.kirkland.com/LEGAL/90142955/40	
Modified DMS: iw://dms.kirkland.com/LEGAL/90142955/56	
<b>Changes:</b>	
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Delete	446
Move From	23
Move To	23
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	1074

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**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

_____	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
_____	)	

**NOTICE OF FILING OF THIRD AMENDED  
 JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND ITS DEBTOR  
 AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

**PLEASE TAKE NOTICE** that on July 6, 2022, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Initial Plan”) [Docket No. 17].

**PLEASE TAKE FURTHER NOTICE** that on August 12, 2022, the Debtors filed the *First Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 287].

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

**PLEASE TAKE FURTHER NOTICE** that on October 5, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 496].

**PLEASE TAKE FURTHER NOTICE** that on October 17, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 539].

**PLEASE TAKE FURTHER NOTICE** that on October 19, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 564].

**PLEASE TAKE FURTHER NOTICE** that on October 20, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 584].

**PLEASE TAKE FURTHER NOTICE** that on October 24, 2022, the Debtors filed the *Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 590] (the “Second Amended Plan”).

**PLEASE TAKE FURTHER NOTICE** that on December 22, 2022, the Debtors filed the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 777].

**PLEASE TAKE FURTHER NOTICE** that on January 8, 2023, the Debtors filed the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 829] (the “Third Amended Plan”).

**PLEASE TAKE FURTHER NOTICE** that the Debtors hereby file a *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, attached hereto as **Exhibit A** (the “Revised Third Amended Plan”).

**PLEASE TAKE FURTHER NOTICE THAT** a comparison between the Third Amended Plan and the Revised Third Amended Plan, is attached hereto as **Exhibit B**.

**PLEASE TAKE FURTHER NOTICE** that copies of the Initial Plan, Second Amended Plan, and other pleadings filed in the above-captioned chapter 11 cases may be obtained free of charge by visiting the website of Stretto at <http://www.cases.stretto.com/Voyager>. You may also obtain copies of any pleadings by visiting the Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

*[Remainder of page intentionally left blank.]*



Dated: January 10, 2023  
New York, New York

*/s/ Joshua A. Sussberg*

**KIRKLAND & ELLIS LLP**

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*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Revised Third Amended Plan**

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

In re:  VOYAGER DIGITAL HOLDINGS, INC. <i>et al.</i> , <sup>1</sup>  <div style="text-align: right;">Debtors.</div>	) ) ) ) ) ) )	Chapter 11  Case No. 22-10943 (MEW)  (Jointly Administered)
---	---------------------------------	---

**THIRD AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND  
 ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

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**NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE,  
 COMMITMENT, OR LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY  
 OTHER PARTY IN INTEREST, AND THIS PLAN IS SUBJECT TO APPROVAL BY THE  
 BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS. THIS PLAN IS NOT AN  
 OFFER WITH RESPECT TO ANY SECURITIES.**

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, LTD. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

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## INTRODUCTION

Voyager Digital Holdings, Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (each a “Debtor” and, collectively, the “Debtors”) propose this third amended joint plan (the “Plan”) for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings set forth in Article I.A of the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, properties and operations, projections, risk factors, a summary and analysis of this Plan, and certain related matters.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## ARTICLE I.

**DEFINED TERMS, RULES OF INTERPRETATION,  
COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES**

### A. Defined Terms

Capitalized terms used in this Plan have the meanings ascribed to them below.

1. “3AC” means Three Arrows Capital, Ltd and any of its Affiliates or subsidiaries.
2. “3AC Claims” means the claims or causes of action asserted or assertable by the Debtors against 3AC, whether in the 3AC Liquidation Proceeding or otherwise.
3. “3AC Liquidation Proceeding” means that certain liquidation proceeding captioned *In the Matter of Three Arrows Capital Ltd. and in the Matter of Sections 159(1) and 162(1)(a) and (b) of the Insolvency Act 2003*, Claim No. BVIHC(COM)2022/0119 before the Eastern Caribbean Supreme Court in the High Court of Justice in the British Virgin Islands and the chapter 15 foreign recognition proceeding captioned *In re Three Arrows Capital, Ltd.*, No. 22-10920 (Bankr. S.D.N.Y. Jul. 1, 2022).
4. “3AC Loan” means that loan of 15,250 Bitcoins and 350 million USDC to 3AC pursuant to that certain master loan agreement dated March 4, 2022 by and between 3AC, as borrower, and OpCo and HTC Trading, Inc., as lenders.
5. “3AC Recovery” means the recovery, if any, of the Debtors from 3AC on account of the 3AC Claims.
6. “Account” means any account at OpCo held by an Account Holder relating to Cryptocurrency, which Account is identified in the Debtors’ books and records as holding Cryptocurrency as of the Petition Date.

7. “*Account Holder*” means any Person or Entity who holds an Account with OpCo as of the Petition Date.

8. “*Account Holder Claim*” means any Claim against the Debtors that is held by an Account Holder on account of such Holder’s Account.

9. “*Acquired Assets*” has the meaning ascribed to it in the Asset Purchase Agreement.

10. “*Acquired Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

11. “*Acquired Coins Value*” has the meaning ascribed to it in the Asset Purchase Agreement.

12. “*Additional Bankruptcy Distribution*” has the meaning ascribed to it in the Asset Purchase Agreement.

13. “*Administrative Claim*” means a Claim against a Debtor for the costs and expenses of administration of the Chapter 11 Cases arising on or after the Petition Date and prior to the Effective Date pursuant to section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors’ business and (b) Allowed Professional Fee Claims.

14. “*Administrative Claims Bar Date*” means the deadline for Filing requests for payment of Administrative Claims (other than requests for payment of Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), which: (a) with respect to Administrative Claims other than Professional Fee Claims, shall be thirty days after the Effective Date; and (b) with respect to Professional Fee Claims, shall be forty-five days after the Effective Date.

15. “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code. With respect to any Person that is not a Debtor, the term “*Affiliate*” shall apply to such Person as if the Person were a Debtor.

16. “*Alameda*” means Alameda Ventures Ltd., along with its Affiliates and subsidiaries.

17. “*Alameda Claims*” means the claims or causes of action asserted or assertable by the Debtors against Alameda, whether in the FTX Bankruptcy Proceeding or otherwise.

18. “*Alameda Loan Agreement*” means that certain unsecured loan agreement, dated as of June 21, 2022, as amended, restated, amended and restated, modified, or supplemented from time to time, by and among Voyager Digital Holdings, Inc., as the borrower, Voyager, as the guarantor, and Alameda, as the lender thereto.

19. “*Alameda Loan Facility*” means that certain unsecured loan facility provided for under the Alameda Loan Agreement.

20. “*Alameda Loan Facility Claims*” means any Claim against any Debtor derived from, based upon, or arising under the Alameda Loan Agreement and any fees, costs, and expenses that are reimbursable by any Debtor pursuant to the Alameda Loan Agreement.

21. “*Alameda Recovery*” means the recovery, if any, of the Debtors from Alameda on account of the Alameda Claims.

22. “*Allowed*” means, with respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim or Interest that is evidenced by a Proof of Claim timely Filed by the Bar Date or a request for payment of Administrative Claim timely Filed by the Administrative Claims Bar Date (or for which Claim or Interest under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court a Proof of Claim or a request for payment of Administrative Claim is not or shall not be required to be Filed); (b) a Claim or Interest that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; (c) a Claim or Interest Allowed pursuant to the Plan, any stipulation approved by the Bankruptcy Court, any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or a Final Order of the Bankruptcy Court, or (d) a Claim or Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court; *provided* that, with respect to a Claim or Interest described in clauses (a) and (b) above, such Claim or Interest shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or if such an objection is so interposed, such Claim or Interest shall have been Allowed by a Final Order. Any Claim or Interest that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes. A Proof of Claim Filed after and subject to the Bar Date or a request for payment of an Administrative Claim Filed after and subject to the Administrative Claims Bar Date, as applicable, shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. “Allow” and “Allowing” shall have correlative meanings.

23. “*Asset Purchase Agreement*” means that certain asset purchase agreement dated as of December 18, 2022 by and between BAM Trading Services Inc. (d/b/a Binance.US) as Purchaser and Voyager Digital, LLC as Seller.

24. “*Assumed Liabilities*” has the meaning ascribed to it in the Asset Purchase Agreement.

25. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as now in effect or hereafter amended.

26. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Southern District of New York, or any other court having jurisdiction over the Chapter 11 Cases, including to the extent of the withdrawal of reference under section 157 of the Judicial Code, the United States District Court for the Southern District of New York.

27. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated by the United States Supreme Court under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

28. “*Bar Date*” means the applicable deadline by which Proofs of Claim must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.

29. “*Bar Date Order*” means the *Order (I) Setting Deadlines for Submitting Proofs of Claims, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof* [Docket No. 218].

30. “*Binance.US Platform*” has the meaning ascribed to it in the Asset Purchase Agreement.
31. “*Binance US*” means BAM Trading Services Inc. (d/b/a Binance.US).
32. “*Binance US Account*” means a customer account opened with the Purchaser by an Account Holder or a Holder of an Allowed OpCo General Unsecured Claim.
33. “*Business Day*” means any day, other than a Saturday, Sunday, or a “legal holiday” (as defined in Bankruptcy Rule 9006(a)).
34. “*Cash*” or “\$” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.
35. “*Causes of Action*” mean any action, Claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, Lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise. For the avoidance of doubt, “*Causes of Action*” includes: (a) any right of setoff, counterclaim, or recoupment and any claim arising from any contract or for breach of duties imposed by law or in equity; (b) any claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, violation of local, state, federal, or foreign law, or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any right to object to or otherwise contest Claims or Interests; (d) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (e) any claim or defense, including fraud, mistake, duress, usury, and any other defenses set forth in section 558 of the Bankruptcy Code.
36. “*CCO*” means Evan Psaropoulos.
37. “*CEO*” means Stephen Ehrlich.
38. “*Certificate*” means any instrument evidencing a Claim or an Interest.
39. “*Chapter 11 Cases*” means (a) when used with reference to a particular Debtor, the case pending for that Debtor in the Bankruptcy Court under chapter 11 of the Bankruptcy Code and (b) when used with reference to all Debtors, the procedurally consolidated cases filed for the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.
40. “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.
41. “*Claims Objection Bar Date*” means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) (i) with respect to Administrative Claims (other than Professional Fee Claims and Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), sixty days after the Administrative Claims Bar Date or (ii) with respect to all other Claims (other than Professional Fee Claims), 180 days after the Effective Date and (b) such other period of limitation as may be specifically fixed by the Debtors or the Wind-Down Trust, as applicable, as approved by an order of the Bankruptcy Court for objecting to such Claims.
42. “*Claims Register*” means the official register of Claims against and Interests in the Debtors maintained by the Clerk of the Bankruptcy Court or the Claims, Noticing, and Solicitation Agent.

43. “*Claims, Noticing, and Solicitation Agent*” means Bankruptcy Management Solutions, Inc. d/b/a Stretto, in its capacity as the claims, noticing, and solicitation agent in the Chapter 11 Cases for the Debtors and any successors appointed by an order of the Bankruptcy Court.

44. “*Class*” means a class of Claims against or Interests in the Debtors as set forth in Article III of the Plan in accordance with section 1122(a) of the Bankruptcy Code.

45. “*Committee*” means the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases.

46. “*Confirmation*” means the Bankruptcy Court’s entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

47. “*Confirmation Date*” means the date on which Confirmation occurs.

48. “*Confirmation Hearing*” means the hearing before the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code at which the Debtors will seek Confirmation of the Plan.

49. “*Confirmation Order*” has the meaning ascribed to it in the Asset Purchase Agreement.

50. “*Consummation*” means the occurrence of the Effective Date.

51. “*Contributed Third-Party Claims*” means all direct Causes of Action that any Contributing Claimant has against any Person (other than a Debtor) that had a direct relationship with the Debtors, their predecessors, or respective affiliates and that harmed such Contributing Claimant in the claimant’s capacity as a creditor of Voyager, including (a) all Causes of Action based on, arising out of, or related to the marketing, sale, and issuance of Cryptocurrency that at any point was held or offered on Voyager’s platform; (b) all Causes of Action based on, arising out of, or related to the alleged misrepresentation of any of the Debtors’ financial information, business operations, or related internal controls; and (c) all Causes of Action based on, arising out of, or related to any alleged failure to disclose, or actual or attempted cover up or obfuscation of, any of the Debtors’ conduct prior to the Petition Date; *provided, however*, that Contributed Third-Party Claims do not include (i) any derivative claims of the Debtors; (ii) any direct claims against the Released Parties; (iii) any direct Causes of Action that any Contributing Claimant has against Mark Cuban, Dallas Basketball Limited d/b/a Dallas Mavericks, the National Basketball Association, and any of their Related Parties; or (iv) any direct Causes of Action that any Contributing Claimant, in its capacity as an equity holder of Voyager Digital Ltd., has that are asserted in the currently filed complaint, dated as of July 6, 2022, in the Ontario Superior Court of Justice by Francine De Sousa, against Voyager Digital Ltd., Stephen Ehrlich, Philip Eytan, Evan Psaropoulos, Lewis Bateman, Krisztian Toth, Jennifer Ackart, Glenn Stevens, and Brian Brooks.

52. “*Contributing Claimants*” means any Holders of Claims or Interests that elect on their ballots or opt-in forms to contribute their Contributed Third-Party Claims to the Wind-Down Entity.

53. “*Cryptocurrency*” means a digital currency or crypto asset in which transactions are verified and records maintained by a decentralized system using cryptography, rather than by a centralized authority, including stablecoins, digital coins and tokens, such as security tokens, utility tokens and governance tokens.

54. “*Cure*” or “*Cure Claim*” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s default under an Executory Contract or an Unexpired Lease assumed







65. “*Distributable Cryptocurrency*” means all Cryptocurrency held on the Voyager platform or that is otherwise property of any Debtor on the Effective Date after payment in full of, or reserve for, all Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims.

66. “*Distributable HoldCo Cash*” means HoldCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at HoldCo in full; and (y) to fund HoldCo’s Pro Rata share of the Wind-Down Reserve.

67. “*Distributable OpCo Cash*” means OpCo’s Cash, including the Purchase Price Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at OpCo in full; and (y) to fund OpCo’s Pro Rata share of the Wind-Down Reserve.

68. “*Distributable TopCo Cash*” means TopCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at TopCo in full; and (y) to fund TopCo’s Pro Rata share of the Wind-Down Reserve.

69. “*Distribution Agent*” means, as applicable, the Purchaser, Wind-Down Debtors, Wind-Down Trust or any Entity or Entities designated by the Purchaser, Wind-Down Debtors, or the Wind-Down Trust (as applicable) to make or to facilitate distributions that are to be made pursuant to the Plan, Definitive Documents, and Asset Purchase Agreement.

70. “*Distribution Date*” means, except as otherwise set forth herein, the date or dates determined by the Wind-Down Trust, on or after the Effective Date, upon which the Distribution Agent shall make distributions to Holders of Allowed Claims entitled to receive distributions under the Plan.

71. “*Distribution Record Date*” means the record date for purposes of determining which Holders of Allowed Claims and Interests against the Debtors are eligible to receive distributions under the Plan, which date shall be the Effective Date, or such other date as is determined by the Debtors or designated by an order of the Bankruptcy Court.

72. “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which (a) all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan, (b) no stay of the Confirmation Order is in effect, and (c) the Debtors declare the Plan effective.

73. “*Employee Transition Plan*” has the meaning set forth in Article IV.E of the Plan, and which shall be in form and substance reasonably acceptable to the Committee.

74. “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

75. “*Estate*” means, as to each Debtor, the estate created on the Petition Date for the Debtor in its Chapter 11 Case pursuant to sections 301 and 541 of the Bankruptcy Code and all property (as defined in section 541 of the Bankruptcy Code) acquired by the Debtor after the Petition Date through and including the Effective Date.

76. “*Excess Policies*” means, collectively, the Excess Insurance Policy, No. EFI1203041-01, issued by Euclid Financial on behalf of Certain Underwriters of Lloyd’s, London, the Excess Insurance Policy, No. RILED0A3392022, issued by Relm Insurance Ltd., both for the February 22, 2022 to February 22, 2023 period, and the Excess Policy, No. ELU184180-23, issued by XL Specialty Insurance Company, for the February 22, 2022 to July 1, 2023 period.

77. “*Exculpated Parties*” means, collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) the Committee, and each of the members thereof, solely in their capacity as such; (c) each of the Released Professionals; (d) each of the Released Voyager Employees; and (e) the Distribution Agent.

78. “*Executory Contract*” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

79. “*Existing Equity Interests*” means any Interest in TopCo existing immediately prior to the occurrence of the Effective Date.

80. “*Extended Outside Date*” has the meaning set forth in the Asset Purchase Agreement.

81. “*Federal Judgment Rate*” means the federal judgment interest rate in effect as of the Petition Date calculated as set forth in section 1961 of the Judicial Code.

82. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing, respectively, in the Chapter 11 Cases with the Bankruptcy Court or its authorized designee, or, with respect to the filing of a Proof of Claim or Proof of Interest, file, filed, or filing, respectively, with the Claims, Noticing, and Solicitation Agent.

83. “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

84. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, petition for certiorari, or move for a new trial, reargument, reconsideration, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, reargument, reconsideration, or rehearing has been timely taken or filed, or as to which any appeal that has been or may be taken or any petition for certiorari or any motion for a new trial, reargument, reconsideration, or rehearing that has been or may be made or filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the motion for a new trial, reargument, reconsideration, or rehearing shall have been denied, resulted in no modification of such order (if any such motion has been or may be granted), or have otherwise been dismissed with prejudice; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure or any comparable Bankruptcy Rule may be filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

85. “*FTX*” means FTX Trading, Ltd. and any of its Affiliates or subsidiaries, including West Realm Shires Inc (d/b/a “FTX.US”).

86. “*FTX Bankruptcy Proceeding*” means that certain chapter 11 proceeding captioned *In re FTX Trading Ltd.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Nov. 11, 2022).

87. “*FTX Claims*” means the claims or causes of action asserted or assertable by the Debtors against FTX, whether in the FTX Bankruptcy Proceeding or otherwise.

88. “*FTX Recovery*” means the recovery, if any, of the Debtors from FTX on account of the FTX Claims.

89. “*General Unsecured Claim*” means, collectively, any HoldCo General Unsecured Claim, OpCo General Unsecured Claim, or TopCo General Unsecured Claim.

90. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

91. “*Government Bar Date*” means the applicable deadline by which Proofs of Claim by a Governmental Unit must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.

92. “*HoldCo*” means Voyager Digital Holdings, Inc.

93. “*HoldCo General Unsecured Claim*” means any Claim against HoldCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Alameda Loan Facility Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation, against HoldCo are HoldCo General Unsecured Claims.

94. “*Holder*” means an Entity holding a Claim against or an Interest in any Debtor.

95. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

96. “*Insurance Policies*” means any and all insurance policies entered into by the Debtors, including the D&O Insurance Policies.

97. “*Intercompany Claim*” means any Claim held by a Debtor or a Debtor’s Affiliate against a Debtor.

98. “*Intercompany Interest*” means, other than an Interest in Voyager, an Interest in one Debtor held by another Debtor or a Debtor’s Affiliate.

99. “*Interest*” means any equity security (as such term is defined in section 101(16) of the Bankruptcy Code) including all issued, unissued, authorized, or outstanding shares of capital stock and any other common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profit interests of an Entity, including all options, warrants, rights, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable, or exchangeable securities, or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in an Entity whether or not arising under or in connection with any employment agreement and whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security, and including any Claim against the Debtors subject to subordination pursuant to section 510(b) of the Bankruptcy Code arising from or related to the foregoing.

100. “*Interim Compensation Order*” means the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* [Docket No. 236].

101. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001 and the rules and regulations promulgated thereunder, as applicable to the Chapter 11 Cases.

102. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

103. “*Liquidation Procedures*” means, in the event the Sale Transaction is not consummated by the Outside Date, such procedures filed by the Wind-Down Entity identifying the mechanics and procedures to effectuate the Liquidation Transaction.

104. “*Liquidation Transaction*” means, in the event the Sale Transaction is not consummated by the Outside Date, the distribution of the Debtors’ Cryptocurrency, Cash and other assets pursuant to Article IV.D of this Plan.

105. “*Management Liability Policy*” means the Executive and Corporate Securities Liability Insurance Policy, No. ELU181214-22, issued by XL Specialty Insurance Company for the February 22, 2022 to February 22, 2023 period.

106. “*Management Transition Plan*” has the meaning set forth in Article IV.E of the Plan, and which shall be in form and substance reasonably acceptable to the Committee.

107. “*Net Owed Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

108. “*Non-Released D&O Claims*” has the meaning set forth in Article IV.F of the Plan.

109. “*Non-Released D&O Claim Budget*” means the amount allocated to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims, which amount shall be agreed upon between the Debtors and the Committee prior to the Confirmation Hearing.

110. “*Non-Released Insurance Claims*” has the meaning set forth in Article IV.F of the Plan.

111. “*OpCo*” means Voyager Digital, LLC.

112. “*OpCo General Unsecured Claim*” means any Claim against OpCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Account Holder Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation against OpCo are OpCo General Unsecured Claims.

113. “*OSC*” means the Ontario Securities Commission.

114. “*Other Priority Claim*” means any Claim against a Debtor, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

115. “*Outside Date*” has the meaning set forth in the Asset Purchase Agreement. All references herein to the “Outside Date” shall be deemed to include the “Extended Outside Date” to the extent the Outside Date is extended in accordance with Section 8.1(c) of the Asset Purchase Agreement.

116. “*Person*” has the meaning set forth in section 101(41) of the Bankruptcy Code.

117. “*Petition Date*” means July 5, 2022.

118. “*Plan*” means this joint chapter 11 plan and all exhibits, supplements, appendices, and schedules hereto, as may be altered, amended, supplemented, or otherwise modified from time to time in

accordance with Article X.A hereof, including the Plan Supplement (as altered, amended, supplemented, or otherwise modified from time to time), which is incorporated herein by reference and made part of the Plan as if set forth herein.

119. “*Plan Supplement*” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may thereafter be amended, supplemented, or otherwise modified from time to time in accordance with the terms of the Plan, the Bankruptcy Code, the Bankruptcy Rules, and applicable law), to be Filed by the Debtors no later than seven days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court, and additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement. The Plan Supplement may include the following, as applicable: (a) the Schedule of Assumed Executory Contracts and Unexpired Leases; (b) the Schedule of Retained Causes of Action; (c) the Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases; (d) the Customer Onboarding Protocol; (e) the Restructuring Transactions Memorandum; (f) the Wind-Down Trust Agreement; and (g) any additional documents necessary to effectuate or that is contemplated by the Plan, including any compensation program for any of the Debtors’ employees to be established as contemplated in the Plan and the Definitive Documents to facilitate the transfer of Acquired Assets pursuant to the Asset Purchase Agreement and the wind-down of the Debtors’ Estates; *provided* that the Schedule of Retained Causes of Action shall be filed no later than 14 days before the Voting Deadline. The Plan Supplement (and the contents thereof) shall be (x) subject to Purchaser’s consent rights solely to the extent set forth under the Asset Purchase Agreement (and shall otherwise be consistent with the Asset Purchase Agreement) and (y) reasonably acceptable to the Committee.

120. “*Priority Tax Claim*” means any Claim of a Governmental Unit against a Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code.

121. “*Pro Rata*” means the proportion that (i) an Allowed Claim or an Allowed Interest in a particular Class bears to (ii) the aggregate amount of Allowed Claims or Allowed Interests in that Class and, solely with respect to Claims in Classes 3 and 4(a), the proportion that an Allowed Claim in either such Class bears to the aggregate amount of Allowed Claims in Classes 3 and 4(a) in the aggregate, unless otherwise indicated. For purposes of calculating Pro Rata distributions if the Sale Transaction is consummated by the Outside Date, the Pro Rata shares of all Holders of Allowed Claims or Allowed Interests shall be calculated taking into account the Acquired Coins Value of the Net Owed Coins distributed to each of the Account Holders.

122. “*Professional*” means an Entity: (a) employed in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code or (b) for which compensation and reimbursement has been Allowed by Final Order of the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

123. “*Professional Fee Claim*” means any Administrative Claim by a Professional for compensation for services rendered or reimbursement of expenses incurred by such Professional through and including the Effective Date to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court. To the extent the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional’s requested fees and expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

124. “*Professional Fee Escrow Account*” means an escrow account funded by the Debtors with Cash no later than the Effective Date in an amount equal to the Professional Fee Escrow Amount.



125. “*Professional Fee Escrow Amount*” means the aggregate amount of quarterly U.S. Trustee fees, Professional Fee Claims, and other unpaid fees and expenses the Professionals have incurred or will incur in rendering services in connection with the Chapter 11 Cases prior to and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, which shall be estimated pursuant to the method set forth in Article II.B of the Plan.

126. “*Proof of Claim*” means a written proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

127. “*Proof of Interest*” means a written proof of Interest Filed against any of the Debtors in the Chapter 11 Cases.

128. “*Purchase Price Cash*” means the Cash paid by the Purchaser to OpCo pursuant to the Asset Purchase Agreement.

129. “*Purchaser*” means Binance US.

130. “*Reinstated*” or “*Reinstatement*” means, with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

131. “*Related Party*” means, with respect to any Entity, in each case in its capacity as such with respect to such Entity, such Entity’s current and former directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and advisors.

132. “*Released Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Wind-Down Debtors; (c) the Committee, and each of the members thereof; (d) each of the Released Professionals; (e) Purchaser and each of its Related Parties; and (f) each of the Released Voyager Employees (subject to the limitations contained in Article IV.F and Article IV.G of the Plan); *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Released Parties” under the Plan.

133. “*Released Professionals*” means the following professionals retained by the Debtors, the Committee, or the Purchaser (as applicable): (i) Kirkland & Ellis LLP; (ii) Moelis & Company LLC; (iii) Berkeley Research Group, LLC; (iv) Bankruptcy Management Solutions, Inc. d/b/a Stretto; (v) Quinn Emanuel Urquhart & Sullivan LLP; (vi) Fasken Martineau DuMoulin LLP; (vii) Campbells Legal (BVI); (viii) McDermott Will & Emery LLP; (ix) FTI Consulting, Inc.; (x) Epiq Corporate Restructuring, LLC; (xi) Cassels, Brock & Blackwell LLP; (xii) Paul Hastings LLP; (xiii) Harney Westwood & Riegels LP (BVI); (xiv) Day Pitney LLP (solely in their capacity as counsel to the Debtors); (xv) Jenner & Block LLP; (xvi) Seyfarth Shaw LLP; (xvii) Alvarez & Marsal Canada Inc.; (xviii) Blake, Cassels & Graydon LLP; (xix) Jaffe Raitt Heuer & Weiss; (xx) Latham & Watkins LLP; (xxi) Lowenstein Sandler LLP; (xxii) Kramer Levin LLP; and (xxiii) Acura Law Firm; *provided* that if the Asset Purchase Agreement is terminated, Latham & Watkins LLP shall not be a “Released Professional” under the Plan.

134. “*Released Voyager Employees*” means all directors, officers, and Persons employed by each of the Debtors and their Affiliates serving in such capacity on or after the Petition Date but before the Effective Date (subject to the limitations contained in Article IV.F and Article IV.G of the Plan).



135. “*Releasing Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Wind-Down Debtors; (c) the Committee, and each of the members thereof; (d) each of the Released Professionals; (e) each of the Released Voyager Employees; (f) Purchaser and each of its Related Parties to the extent Purchaser is able to bind such Related Parties; (g) all Holders of Claims that vote to accept the Plan and affirmatively opt into the releases provided by the Plan; (h) all Holders of Claims that vote to reject the Plan and affirmatively opt into the releases provided by the Plan; and (i) all Holders of Claims or Interests that abstain from voting (or are otherwise not entitled to vote) on the Plan and affirmatively opt into the releases provided by the Plan; *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Releasing Parties” under the Plan.

136. “*Restructuring Transactions*” means those mergers, amalgamations, consolidations, reorganizations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions, or other corporate transactions that the Debtors and the Committee jointly determine to be necessary to implement the transactions described in this Plan, as described in more detail in Article IV.B herein and the Restructuring Transactions Memorandum.

137. “*Restructuring Transactions Memorandum*” means that certain memorandum as may be amended, supplemented, or otherwise modified from time to time, describing the steps to be carried out to effectuate the Restructuring Transactions, the form of which shall be included in the Plan Supplement, and which shall be in a form reasonably acceptable to the Committee.

138. “*Robertson Class Action*” means that certain putative class action litigation filed in the United States District Court for the Southern District of Florida, captioned *Robertson, et al. v. Cuban, et al.*, No. 1:22-cv-22538-RKA (S.D. Fla. Aug. 10, 2022).

139. “*Sale Transaction*” means the sale of certain of the Debtors’ assets and all other transactions pursuant to the Asset Purchase Agreement.

140. “*Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance acceptable to the Purchaser and in all respects consistent with the terms of the Asset Purchase Agreement, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors and assigned to the Purchaser pursuant to the Plan and Asset Purchase Agreement, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Trust, as applicable, in accordance with the Plan.

141. “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance reasonably acceptable to the Committee, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Trust, as applicable, in accordance with the Plan.

142. “*Schedule of Retained Causes of Action*” means the schedule of certain Causes of Action of the Debtors that are not released, waived, settled, compromised, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors and/or the Wind-Down Entity, which shall be included in the Plan Supplement. For the avoidance of doubt, any failure to specifically list any Causes of Action on the Schedule of Retained Causes of Action shall not be deemed a waiver or admission that any such Cause of Action does not constitute Vested Causes of Action.

143. “*Schedules*” means, collectively, the schedules of assets and liabilities, Schedule of Assumed Executory Contracts and Unexpired Leases, Schedule of Assumed and Assigned Executory

Contracts and Unexpired Leases, and statements of financial affairs Filed by each of the Debtors pursuant to section 521 of the Bankruptcy Code, as such schedules and statements may have been or may be amended, modified, or supplemented from time to time.

144. “SEC” means the United States Securities and Exchange Commission.

145. “*Section 510(b) Claim*” means any Claim against a Debtor subject to subordination under section 510(b) of the Bankruptcy Code.

146. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a secured Claim.

147. “*Secured Tax Claim*” means any Secured Claim against a Debtor that, absent its Secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

148. “*Securities Act*” means the U.S. Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

149. “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act.

150. “*Side-A Policy*” means the Cornerstone A-Side Management Liability Policy, ELU184179-22, issued by XL Specialty Insurance Company, for the July 1, 2022 to July 1, 2023 period.

151. “*Solicitation Materials*” means all solicitation materials with respect to the Plan.

152. “*Special Committee*” means the special committee established at OpCo, comprised of two independent directors, to conduct the Special Committee Investigation.

153. “*Special Committee Investigation*” means that certain investigation undertaken by the Special Committee into certain historical transactions, as more fully described in the Disclosure Statement.

154. “*Supported Jurisdiction*” has the meaning ascribed to it in the Asset Purchase Agreement.

155. “*TopCo*” means Voyager Digital Ltd., a Canadian corporation that is publicly traded on the Toronto Stock Exchange.

156. “*TopCo General Unsecured Claim*” means any Claim against TopCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Alameda Loan Facility Claim; (h) an Intercompany Claim; or (i) a Section 510(b) Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation, other than 510(b) Claims, against TopCo are TopCo General Unsecured Claims.

157. “*Transferred Creditors*” means Account Holders and Holders of Allowed OpCo General Unsecured Claims who have completed all documentation and “KYC” processes reasonably required by Purchaser in the ordinary course of Purchaser’s business with respect to similarly situated clients and who have opened a Binance US Account as of the date that is three (3) months following the later of the Closing Date (as defined in the Asset Purchase Agreement) or such later date as may be specified in the Customer Onboarding Protocol, and the successors and assigns of such Holders.

158. “*Transferred Cryptocurrency Value*” means the aggregate VWAP of any Cryptocurrency that is the subject of an Additional Bankruptcy Distribution as of the date that is two Business Days prior to such Additional Bankruptcy Distribution.

159. “*U.S. Trustee*” means the Office of the United States Trustee for Region 2.

160. “*Unclaimed Distribution*” means any distribution under the Plan on account of an Allowed Claim or Allowed Interest to a Holder that, after the expiration of six months after the Effective Date, has not: (a) accepted a distribution, (b) given notice to the Wind-Down Trust of an intent to accept a particular distribution, (c) responded to the Debtors’ or Wind-Down Trust’s requests for information necessary to facilitate a particular distribution, or (d) taken any other action necessary to facilitate such distribution.

161. “*Unexpired Lease*” means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or section 1123 of the Bankruptcy Code.

162. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

163. “*Unsupported Jurisdiction*” has the meaning ascribed to it in the Asset Purchase Agreement.

164. “*Unsupported Jurisdiction Approval*” has the meaning ascribed to it in the Asset Purchase Agreement.

165. “*Vested Causes of Action*” means the Causes of Action vesting in the Wind-Down Entity pursuant to Article IV.L of the Plan, including, but not limited to, those Causes of Action enumerated on the Schedule of Retained Causes of Action, which shall be included in the Plan Supplement and in all respects consistent with the terms of the Asset Purchase Agreement.

166. “*VGX*” means Voyager Token, that certain Cryptocurrency issued by the Debtors.

167. “*Voting Deadline*” means February 22, 2023.

168. “*Voyager*” means Voyager Digital Ltd. and its direct and indirect Affiliates.

169. “*VWAP*” means, with respect to any type of Cryptocurrency and as of any date of determination, an amount equal to the volume weighted average price in U.S. dollars for such type of Cryptocurrency for the consecutive 24-hour period immediately prior to 8:00 a.m. New York Time on such date of determination, as reported on <https://coinmarketcap.com>.

170. “*Wind-Down Debtor*” means a Debtor, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date.

171. “*Wind-Down Entity*” means the Wind-Down Debtor or the Wind-Down Trust, as applicable, pursuant to the Restructuring Transactions Memorandum.

172. “*Wind-Down Entity Assets*” means the Wind-Down Trust Assets or any assets transferred to the Wind-Down Debtor, as applicable.

173. “*Wind-Down Reserve*” means an amount, which shall be agreed upon between the Debtors and the Committee prior to the Confirmation Hearing.

174. “*Wind-Down Trust*” means the trust established on the Effective Date and described in Article IV.H to be established under Delaware trust law that, among other things, shall effectuate the wind-down of the Wind-Down Debtors, commence, litigate and settle the Vested Causes of Action that are not released, waived, settled, compromised, or transferred under the Plan and make distributions pursuant to the terms of the Plan and the Wind-Down Trust Agreement; *provided* that, for the avoidance of doubt, the Wind-Down Trust shall not conduct any business operations or continue the Debtors’ business operations after the Effective Date.

175. “*Wind-Down Trust Agreement*” means that certain trust agreement by and among the Debtors, the Committee, and the Wind-Down Trust, which shall be included in the Plan Supplement in a form reasonably acceptable to the Committee.

176. “*Wind-Down Trust Assets*” means all of the Debtors’ assets transferred to, and vesting in, the Wind-Down Trust pursuant to the Wind-Down Trust Agreement, which, in the event the Sale Transaction is consummated, shall exclude the Acquired Assets, and which shall include, without limitation but only to the extent the following are not Acquired Assets, (a) the Wind-Down Reserve, (b) the Net-Owed Coins to be distributed to Account Holders in Unsupported Jurisdictions to the extent the Purchaser has not obtained the applicable Unsupported Jurisdiction Approval in accordance with Section 6.12 of the Asset Purchase Agreement, (c) any distributions to Account Holders or Holders of OpCo General Unsecured Claims that are returned to the Wind-Down Entity pursuant to Section 6.12(e) of the Asset Purchase Agreement, (d) 3AC Claims and 3AC Recovery, (e) FTX Claims and FTX Recovery, (f) Alameda Claims and Alameda Recovery, (g) the Non-Released D&O Claims, and (h) the Vested Causes of Action.

177. “*Wind-Down Trust Beneficiaries*” means the Holders of Allowed Claims or Allowed Interests that are entitled to receive distributions pursuant to the terms of the Plan, whether or not such Claims or Interests are Allowed as of the Effective Date.

178. “*Wind-Down Trust Expenses*” means all actual and necessary costs and expenses incurred by the Wind-Down Trustee in connection with carrying out the obligations of the Wind-Down Trust pursuant to the terms of the Plan and the Wind-Down Trust Agreement.

179. “*Wind-Down Trust Oversight Committee*” means the oversight committee tasked with overseeing the Wind-Down Trust in accordance with the Plan and the Wind-Down Trust Agreement.

180. “*Wind-Down Trust Units*” means the beneficial interests in the Wind-Down Trust as more fully set forth in the Wind-Down Trust Agreement.

181. “*Wind-Down Trustee*” means the Person or Persons selected by the Committee, after consultation with the Debtors, subject to the approval of the Bankruptcy Court and identified in the Plan Supplement, to serve as the trustee(s) of the Wind-Down Trust, and any successor thereto, appointed pursuant to the Wind-Down Trust Agreement.

## **B. Rules of Interpretation**

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; (2) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form; (3) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (4) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed, shall mean that document, schedule, or exhibit, as it may thereafter have been or may thereafter be validly amended, amended and restated, supplemented, or otherwise modified; (5) unless otherwise specified, any reference to an Entity as a Holder of a Claim or Interest, includes that Entity's successors and assigns; (6) unless otherwise specified, all references herein to "Articles" are references to Articles hereof or hereto; (7) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (8) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to any particular portion of the Plan; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (12) references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (13) unless otherwise specified, all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases; (14) any effectuating provisions may be interpreted by the Debtors or the Wind-Down Trust in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; (15) any references herein to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter; (16) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; (17) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; and (18) the use of "include" or "including" is without limitation unless otherwise stated.

## **C. Computation of Time**

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

## **D. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan and any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, documents, instruments,



or contracts, in which case the governing law of such agreement shall control); *provided* that corporate, limited liability company, or partnership governance matters relating to the Debtors or the Wind-Down Debtors, as applicable, shall be governed by the laws of the jurisdiction of incorporation or formation of the relevant Debtor or Wind-Down Debtor, as applicable.

**E. Reference to Monetary Figures**

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

**F. Reference to the Debtors or the Wind-Down Debtors**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Wind-Down Debtors mean the Debtors and the Wind-Down Debtors, as applicable, to the extent the context requires.

**G. Nonconsolidated Plan**

Although for purposes of administrative convenience and efficiency the Plan has been filed as a joint plan for each of the Debtors and presents together Classes of Claims against and Interests in the Debtors, the Plan does not provide for the substantive consolidation of any of the Debtors.

**ARTICLE II.**

**ADMINISTRATIVE AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

**A. Administrative Claims**

Except as otherwise provided in this Article II.A and except with respect to Administrative Claims that are Professional Fee Claims or subject to 11 U.S.C. § 503(b)(1)(D), unless previously Filed, requests for payment of Allowed Administrative Claims (other than Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code) must be Filed and served on the Wind-Down Entity pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such Administrative Claims shall be deemed satisfied as of the Effective Date without the need for any objection from the Wind-Down Entity or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity. Objections to such requests, if any, must be Filed and served on the Wind-Down Entity and the requesting party by the Claims Objection Bar Date for Administrative Claims. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order of the Bankruptcy Court.

Except with respect to Administrative Claims that are Professional Fee Claims, and except to the extent that an Administrative Claim or Priority Tax Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Claim and the applicable Debtor(s) agree to less favorable treatment, each Holder of an Allowed Administrative Claim shall receive an amount of Cash equal to the



amount of the unpaid or unsatisfied portion of such Allowed Administrative Claim in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Effective Date, no later than thirty (30) days after the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Wind-Down Entity, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court. Any Cryptocurrency inadvertently deposited to the Debtors' account(s) after the Petition Date shall be returned to the sender in full.

Objections to requests for payment of such Administrative Claims, if any, must be Filed with the Bankruptcy Court and served on the Wind-Down Entity and the requesting Holder no later than the Claims Objection Bar Date for Administrative Claims. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, an order that becomes a Final Order of the Bankruptcy Court.

## **B. Professional Fee Claims**

### **1. Final Fee Applications and Payment of Professional Fee Claims**

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules. The Wind-Down Entity shall pay Professional Fee Claims in Cash to such Professionals in the amount the Bankruptcy Court allows, including from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court; *provided* that the Debtors' and the Wind-Down Entity's obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account.

### **2. Professional Fee Escrow Account**

No later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and the U.S. Trustee and for no other Entities until all quarterly U.S. Trustee fees and all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the U.S. Trustee or to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. No funds held in the Professional Fee Escrow Account shall be property of the Estates of the Debtors or the Wind-Down Entity. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, and all U.S. Trustee quarterly fees plus statutory interest, if any, have been paid in full, any remaining funds held in the Professional Fee



Confirmation, and distributions pursuant to the Plan and in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

## B. Summary of Classification

A summary of the classification of Claims against and Interests in each Debtor pursuant to the Plan is set forth in the following chart. The Plan constitutes a separate chapter 11 plan for each of the Debtors, and accordingly, the classification of Claims and Interests set forth below applies separately to each of the Debtors. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes, and such Claims or Interests shall be treated as set forth in Article III.E hereof. Voting tabulations for recording acceptances or rejections of the Plan will be conducted on a Debtor-by-Debtor basis as set forth above.<sup>1</sup>

Class	Claim or Interest	Status	Voting Rights
1	Secured Tax Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3	Account Holder Claims	Impaired	Entitled to Vote
4A	OpCo General Unsecured Claims	Impaired	Entitled to Vote
4B	HoldCo General Unsecured Claims	Impaired	Entitled to Vote
4C	TopCo General Unsecured Claims	Impaired	Entitled to Vote
5	Alameda Loan Facility Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
6	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
8	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)

<sup>1</sup> The Debtors reserve the right to separately classify Claims or Interests to the extent necessary to comply with any requirements under the Bankruptcy Code or applicable law.

Class	Claim or Interest	Status	Voting Rights
9	Existing Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

### C. Treatment of Classes of Claims and Interests

Subject to Article VI hereof, each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in exchange for such Holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors or Wind-Down Entity, as applicable, and the Holder of such Allowed Claim or Allowed Interest, as applicable. In no event shall any Holder of a Claim receive more than such Holder's Allowed amount on account of such Claim.

1. Class 1 —Secured Tax Claims

- (a) *Classification:* Class 1 consists of all Secured Tax Claims.
- (b) *Treatment:* Each Holder of an Allowed Secured Tax Claim shall receive, in full and final satisfaction of such Allowed Secured Tax Claim, at the option of the Wind-Down Entity, payment in full in Cash of such Holder's Allowed Secured Tax Claim or such other treatment rendering such Holder's Allowed Secured Tax Claim Unimpaired.
- (c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Allowed Secured Tax Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Secured Tax Claims are not entitled to vote to accept or reject the Plan.

## 2. Class 2 — Other Priority Claims

- (a) *Classification:* Class 2 consists of all Other Priority Claims.
- (b) *Treatment:* Each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction of such Allowed Other Priority Claim, at the option of the applicable Debtor, payment in full in Cash of such Holder's Allowed Other Priority Claim or such other treatment rendering such Holder's Allowed Other Priority Claim Unimpaired.
- (c) *Voting:* Class 2 is Unimpaired under the Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

### 3. Class 3 — Account Holder Claims

- (a) *Classification:* Class 3 consists of all Account Holder Claims.
- (b) *Allowance:* Account Holder Claims shall be conclusively Allowed in the amount listed on OpCos's *Amended Schedules of Assets and Liabilities* (Case No. 22-10945) [Docket No. 18]; *provided* that the rights of any Holder of an

Account Holder Claim to object to the scheduled amount shall be preserved. To the extent an Account Holder Claim is Allowed in a greater amount than the scheduled amount of such Account Holder Claim, such Holder shall be entitled to a subsequent distribution such that it will receive its Pro Rata share of recoveries to Holders of Allowed Account Holder Claims. Account Holder Claims shall be valued in U.S. dollars as of the Petition Date consistent with section 502(b) of the Bankruptcy Code.

- (c) *Treatment:* Each Holder of an Allowed Account Holder Claim will receive in exchange for such Allowed Account Holder Claim:

- (i) If the Sale Transaction is consummated by the Outside Date:
- A. its Net Owed Coins, as provided in and subject to the requirements of Sections 6.10 and 6.12 of the Asset Purchase Agreement; *provided* that for Account Holders in Unsupported Jurisdictions and only to the extent that the Purchaser does not obtain the Unsupported Jurisdiction Approval for the jurisdiction in which such Account Holder resides within 6 months following the Closing Date (as defined in the Asset Purchase Agreement), such Account Holders shall receive, after expiration of such time period, value in Cash at which such Net Owed Coins allocable to such Account Holder are liquidated;
  - B. its Pro Rata share of any Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;
  - C. its Pro Rata share of Distributable OpCo Cash; and
  - D. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims;

*provided* that distributions made to any Account Holder pursuant to clauses (B), (C), and (D) above shall be made after taking into account the Acquired Coins Value of the Net Owed Coins or the value in Cash at which such Net Owed Coins are liquidated, as applicable, previously allocated to such Account Holder: or

- (ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:

- A. its Pro Rata share of Distributable OpCo Cash;

- (d) *Voting:* Class 3 is Impaired under the Plan. Holders of Allowed Account Holder Claims are entitled to vote to accept or reject the Plan.

4. Class 4A — OpCo General Unsecured Claims

- (a) *Classification:* Class 4A consists of all OpCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed OpCo General Unsecured Claim will receive in exchange for such Allowed OpCo General Unsecured Claim:
  - (i) If the Sale Transaction is consummated by the Outside Date:
    - A. its Pro Rata share of Distributable Cryptocurrency in Cash;
    - B. its Pro Rata share of Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;
    - C. its Pro Rata share of Distributable OpCo Cash; and
    - D. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Entity Assets or



Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims; or

- (ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:
  - A. its Pro Rata share of Distributable Cryptocurrency in Cash;
  - B. its Pro Rata share of Distributable OpCo Cash; and
  - C. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to OpCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.
- (c) *Voting:* Class 4A is Impaired under the Plan. Holders of Allowed OpCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

5. Class 4B — HoldCo General Unsecured Claims

- (a) *Classification:* Class 4B consists of all HoldCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed HoldCo General Unsecured Claim will receive in exchange for such Allowed HoldCo General Unsecured Claim:
  - (i) its Pro Rata share of Distributable HoldCo Cash; and
  - (ii) to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to HoldCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.

- (c) ***Voting:*** Class 4B is Impaired under the Plan. Holders of Allowed HoldCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

6. Class 4C — TopCo General Unsecured Claims

- (a) *Classification:* Class 4C consists of all TopCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed TopCo General Unsecured Claim will receive in exchange for such Allowed TopCo General Unsecured Claim:
  - (i) its Pro Rata share of Distributable TopCo Cash; and
  - (ii) to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of the Wind-Down Trust Assets attributable to TopCo; *provided* that any distributions on account of the Wind-Down Entity Assets or the Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.
- (c) *Voting:* Class 4C is Impaired under the Plan. Holders of Allowed TopCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 5 — Alameda Loan Facility Claims

- (a) *Classification:* Class 5 consists of all Alameda Loan Facility Claims.
- (b) *Treatment:* Each Holder of an Allowed Alameda Loan Facility Claim will receive in exchange for such Allowed Alameda Loan Facility Claim to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets; *provided* that any distributions on account of Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, all Allowed Claims at OpCo, HoldCo, and TopCo, including, but not limited to, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, Allowed Account Holder Claims, Allowed OpCo General Unsecured Claims, Allowed HoldCo General Unsecured Claims, and Allowed TopCo General Unsecured Claims; *provided, however*, if the Bankruptcy Court denies subordination of the Alameda Loan Facility Claims, then such Alameda Loan Facility Claims shall be *pari passu* with General Unsecured Claims at the applicable Debtor entity.
- (c) *Voting:* Class 5 is Impaired under the Plan. Holders of Allowed Alameda Loan Facility Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Allowed Alameda Loan Facility Claims are not entitled to vote to accept or reject the Plan.

8. Class 6 — Section 510(b) Claims

- (a) *Classification:* Class 6 consists of all Section 510(b) Claims against TopCo.
- (b) *Allowance:* Notwithstanding anything to the contrary herein, a Section 510(b) Claim against TopCo, if any such Section 510(b) Claim exists, may only become Allowed by Final Order of the Bankruptcy Court.
- (c) *Treatment:* Each Holder of Allowed Section 510(b) Claims against TopCo will receive, to effectuate distributions, if applicable, from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to TopCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims.
- (d) *Voting:* Class 6 is Impaired under the Plan. Holders (if any) of Allowed Section 510(b) Claims against TopCo are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders (if any) of Allowed Section 510(b) Claims against TopCo are not entitled to vote to accept or reject the Plan.

## 9. Class 7 — Intercompany Claims

- (a) *Classification:* Class 7 consists of all Intercompany Claims.
- (b) *Treatment:* On the Effective Date, all Intercompany Claims shall be, at the option of the Debtors, either (a) Reinstated or (b) converted to equity, otherwise set off, settled, distributed, contributed, or cancelled, in each case in accordance with the Restructuring Transactions Memorandum.
- (c) *Voting:* Holders of Intercompany Claims are either Unimpaired or Impaired, and such Holders of Intercompany Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

## 10. Class 8 — Intercompany Interests

- (a) *Classification:* Class 8 consists of all Intercompany Interests.
- (b) *Treatment:* On the Effective Date, all Intercompany Interests shall be, at the option of the Debtors, either (a) Reinstated in accordance with Article III.G of the Plan or (b) set off, settled, addressed, distributed, contributed, merged, or cancelled, in each case in accordance with the Restructuring Transactions Memorandum.
- (c) *Voting:* Holders of Intercompany Interests are either Unimpaired or Impaired, and such Holders of Intercompany Interests are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore,

Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

11. Class 9 — Existing Equity Interests

- (a) *Classification:* Class 9 consists of all Existing Equity Interests.
- (b) *Treatment:* Each Holder of Existing Equity Interests will receive, to effectuate distributions, if applicable, from the Wind-Down Entity, its Pro Rata share of the Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets attributable to TopCo; *provided* that any distributions on account of Wind-Down Trust Units shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims.
- (c) *Voting:* Class 9 is Impaired under the Plan. Holders of Existing Equity Interests are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan.

#### **D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Wind-Down Entity's rights in respect of any Unimpaired Claim, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

### E. Elimination of Vacant Classes; Presumed Acceptance by Non-Voting Classes

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

## F. Subordinated Claims

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims against and Allowed Interests in the Debtors and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Wind-Down Entity reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

## G. Intercompany Interests

To the extent Reinstated under the Plan, distributions (if any) on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience and due to the importance of maintaining the corporate

structure given the existing intercompany systems connecting the Debtors and their Affiliates, and in exchange for the Debtors' and Wind-Down Entity's agreement under the Plan to make certain distributions to the Holders of Allowed Claims.

#### **H. Controversy Concerning Impairment**

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

#### **I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code is satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims or Interests. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

### **ARTICLE IV.**

#### **PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

##### **A. General Settlement of Claims and Interests**

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as well as a finding by the Bankruptcy Court that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

##### **B. Restructuring Transactions**

On or before the Effective Date, the applicable Debtors will take any action as may be necessary or advisable to effectuate the Restructuring Transactions described in the Plan, the Restructuring Transactions Memorandum, and the Customer Onboarding Protocol, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (3) the filing of appropriate

### C. The Sale Transaction

On or prior to the Effective Date, the Debtors shall have consummated the Sale Transaction, and, among other things, the Acquired Assets and Assumed Liabilities shall have transferred to the Purchaser free and clear of all Liens, Claims, Interests, charges, or other encumbrances, and the Purchaser shall pay to the Debtors or Holders of Account Holder Claims and Holders of OpCo General Unsecured Claims, as applicable, the proceeds from the Sale Transaction, as and to the extent provided for in the Asset Purchase Agreement, and this Plan. The Confirmation Order shall authorize the Debtors, the Purchaser, and the Wind-Down Entity, as applicable, to undertake the transactions contemplated by the Asset Purchase Agreement, including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code.

Notwithstanding anything contained in this Plan and any Definitive Documents, if the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated, all provisions contained in this Plan and the Definitive Documents governing the Sale Transaction shall have no further force and effect, and the provisions governing the Liquidation Transaction shall govern. The rights and remedies of the Seller and Purchaser under the Asset Purchase Agreement and any related orders of the Bankruptcy Court shall be expressly preserved.





## F. Non-Released D&O Claims

Any Claims or Causes of Action held by the Debtors or their respective estates against the Debtors' CEO and/or CCO (regardless of any fiduciary capacity in which such individuals were acting) that are expressly related to approval of the 3AC Loan are not released pursuant to the Plan (collectively, the "Non-Released D&O Claims"), and shall be assigned and transferred to the Wind-Down Entity to be pursued, settled, or resolved by the Wind-Down Entity in accordance with the terms of Article IV.G of this Plan and subject to the Wind-Down Reserve. Any claims against the D&O Carriers that the Debtors' insurance transactions within the 90 days prior to the Petition Date are avoidable under the Bankruptcy Code, applicable state law, or both (the "Non-Released Insurance Claims") shall be assigned and transferred to the Wind-Down Entity to be pursued, settled, or resolved solely by the Wind-Down Entity in accordance with the terms of Article IV.G of this Plan. The Wind-Down Entity shall be a successor to the Debtors' rights, title, and interest in any Non-Released D&O Claims and Non-Released Insurance Claims, and the Wind-Down Entity shall have standing to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims in accordance with the terms of Article IV.G of this Plan; *provided* that: (i) any recovery by the Wind-Down Entity (and the beneficiaries thereof) on account of any Non-Released D&O Claim, including in each case by way of settlement or judgment, shall be satisfied solely by and to the extent of the proceeds of the Debtors' available D&O Liability Insurance Policies (and/or from the D&O Carriers directly) after payment from such D&O Liability Insurance Policies of any and all covered costs and expenses incurred in connection with the defense of the Non-Released D&O Claims; (ii) any party, including any trustee or any beneficiary of the Wind-Down Entity, seeking to execute, garnish, or otherwise attempt to collect on any settlement of or judgment in the Non-Released D&O Claims shall do so solely upon available insurance coverage from the Debtors' available D&O Liability Insurance Policies; and (iii) no party shall (a) record any judgment against the CEO or CCO, or (b) otherwise attempt to collect, directly or indirectly, from the personal assets of the CEO or CCO with respect to the Non-Released D&O Claims. For the avoidance of doubt, this provision does not enjoin, limit, or impair direct claims held by third parties against the Debtors' CEO or CCO (if any) other than any direct claims held by Holders of Claims or Interests that opt into the third party release in Article VIII.B of this Plan. Only upon the occurrence of the earlier of (x) a release being given as part of any later settlement of the Non-Released D&O Claims; (y) final resolution of any coverage claims asserted against the Debtors' available D&O Liability Insurance Policies on account of the Non-Released D&O Claims; or (z) exhaustion of the available insurance coverage under the D&O Liability Insurance Policies, the Non-Released D&O Claims shall be released and discharged without the need for further action or Bankruptcy Court order. For the avoidance of doubt, any release of the Non-Released D&O Claims shall not become effective until one of the three conditions stated in the preceding sentence above has been met.

### G. The D&O Settlement

On the Effective Date, the terms of the D&O Settlement shall be effectuated as provided in this Article IV.G.

Pursuant to the D&O Settlement, CEO shall repay the \$1,900,000 received from the Debtors on or around February 28, 2022, by paying the after-tax amount of such transfer (approximately \$1,125,000) to OpCo in cash and assigning the right, if any, to any tax refund for the balance to the Wind-Down Entity. CEO shall subordinate any Claims (including any indemnification claims asserted under this Art. IV.F) he holds against the Debtors until all other Holders of Claims are paid in full. CCO shall subordinate 50 percent of any Claims he holds other than indemnification claims (and 100% of any indemnification claims asserted under this Art. IV.F) against the Debtors until all other Holders of Claims are paid in full; *provided, however*, that in the event the D&O Carriers deny coverage to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.

CEO and CCO shall be entitled to receive their salary and benefits for as long as they work for the Debtors and/or the Wind-Down Entity and retain the right to assert claims for advancement and indemnification up to the limits of any available coverage in the event any of the insurers that issued the Management Liability Policy, the Excess Policy, or the Side-A Policy denies coverage to CEO and/or CCO based upon or arising out of the lack of a formal claim for indemnification; *provided, however*, that any such indemnification or advancement claims shall be subordinated in full unless and until all other Holders of Claims are paid in full; *provided, further*, that in the event that any of the D&O Carriers deny coverage to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.

In the event that the sworn financial disclosure statements under penalty of perjury provided to the Debtors, the Special Committee and the Committee by CEO and CCO are later determined at any time by Final Order of the Bankruptcy Court or other court of competent jurisdiction to be materially inaccurate, (a) the limitations on recovery by the Wind-Down Entity under this Article IV.G shall no longer apply, (b) any and all release, exculpation and injunction provisions in Article VIII of this Plan with respect to CEO and/or CCO (as applicable) shall be deemed null and void, (c) all Releasing Parties' rights with respect to the CEO and/or CCO (as applicable) shall be fully intact and preserved, (d) amounts paid by CEO shall not be repaid by the Wind-Down Entity, and (e) any applicable statute of limitations shall be deemed tolled from the Petition Date to the date of entry of the order referenced above. The Wind-Down Trust, as successor to the Debtors, shall have standing to bring a motion seeking relief pursuant to this Article IV.G.

Entry of the Confirmation Order shall be deemed approval of the D&O Settlement and, to the extent not already approved by the Bankruptcy Court, the Debtors or the Wind-Down Debtors, as applicable, are authorized to negotiate, execute, and deliver those documents necessary or appropriate to effectuate the D&O Settlement, without further notice or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors, the Wind-Down Debtors, the Committee, and the Special Committee may deem to be necessary to effectuate the D&O Settlement.

## **H. Wind-Down Trust**

On the Effective Date, the Wind-Down Trust shall be formed for the benefit of the Wind-Down Trust Beneficiaries and each of the Debtors shall transfer the Wind-Down Trust Assets for distribution in accordance with the terms of the Plan. The Confirmation Order shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan.

### **1. Establishment of a Wind-Down Trust**

Pursuant to the Wind-Down Trust Agreement, the Wind-Down Trust will be established. The Wind-Down Trust shall be the successor-in-interest to the Debtors, and the Wind-Down Trust shall be a successor to the Debtors' rights, title, and interest to the Wind-Down Trust Assets. The Wind-Down Trust will conduct no business operations and will be charged with winding down the Debtors' Estates. The Wind-Down Trust shall be managed by the Wind-Down Trustee and shall be subject to a Wind-Down Trust Oversight Committee. For the avoidance of doubt, in the event that the Restructuring Transactions Memorandum specifies that the Wind-Down Debtors will be the Wind-Down Entity, the Wind-Down Debtors shall be managed by the Wind-Down Trustee and shall be subject to the Wind-Down Trust Oversight Committee in the same manner as if the Wind-Down Entity is the Wind-Down Trust. The Wind-Down Trust shall be administered in accordance with the terms of the Wind-Down Trust Agreement and shall be subject to the Wind-Down Reserve and the Non-Released D&O Claim Budget. For the avoidance of doubt, the Wind-Down Trust shall not have any right or interest in any Cause of Action or Claim constituting an Acquired Asset. The Wind-Down Trust shall be administered in a manner consistent with the SEC's published guidance on liquidating trusts.

Prior to the Effective Date, any and all of the Debtors' assets shall remain assets of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and on the Effective Date the Wind-Down Trust Assets shall, subject to the Wind-Down Trust Agreement, be transferred to and vest in the Wind-Down Trust or the Wind-Down Debtors, as applicable. For the avoidance of doubt, to the extent not otherwise waived in writing, released, settled, compromised, assigned or sold pursuant to a prior order or the Plan, the Wind-Down Entity specifically retains and reserves the right to assert, after the Effective Date, any and all of the Vested Causes of Action and related rights, whether or not asserted as of the Effective Date, and all proceeds of the foregoing, subject to the terms of the Plan, including without limitation Article IV.F and Article IV.G.

Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, only the Wind-Down Trust and the Wind-Down Trustee shall have the right to pursue or not to pursue, or, subject to the terms hereof and the Wind-Down Trust Agreement, compromise or settle any Wind-Down Trust Assets transferred to the Wind-Down Trust. On and after the Effective Date, the Wind-Down Trust and the Wind-Down Trustee may, without further Bankruptcy Court approval, commence, litigate, and settle any Vested Causes of Action or Claims relating to any Wind-Down Trust Assets transferred to the Wind-Down Trust or rights to payment or Claims that belong to the Debtors as of the Effective Date or are instituted by the Wind-Down Trust or

The Wind-Down Trustee shall be deemed hereby substituted as plaintiff, defendant, or in any other capacity for the Debtors in any Causes of Action pending before the Bankruptcy Court or any other court that relates to a Wind-Down Trust Asset without the need for filing any motion for such relief. On the Effective Date, the Debtors and the Wind-Down Trustee shall execute the Wind-Down Trust Agreement and shall have established the Wind-Down Trust pursuant hereto. In the event of any conflict between the terms of this Article IV.H and the terms of the Wind-Down Trust Agreement, the terms of the Wind-Down Trust Agreement shall control.

## 2. Wind-Down Entity Assets

Notwithstanding any prohibition on assignability under applicable non-bankruptcy law, on the Effective Date and thereafter if additional Wind-Down Entity Assets become available, the Debtors shall be deemed, subject to the Wind-Down Trust Agreement, to have automatically transferred to the applicable Wind-Down Entity all of their right, title, and interest in and to all of the Wind-Down Trust Assets, in accordance with section 1141 of the Bankruptcy Code. All such assets shall automatically vest in the Wind-Down Entity free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims and Interests as set forth herein and the expenses of the Wind-Down Trust as set forth herein and in the Wind-Down Trust Agreement. Thereupon, the Debtors shall have no interest in or with respect to the Wind-Down Entity Assets or the Wind-Down Trust.

3. Treatment of Wind-Down Trust for Federal Income Tax Purposes; No Successor-in-Interest

The Wind-Down Trust shall be established for the primary purpose of liquidating and distributing the Wind-Down Trust Assets transferred to it, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Wind-Down Trust. Accordingly, the Wind-Down Trustee may, in an expeditious but orderly manner, liquidate the Wind-Down Trust Assets, make timely distributions to the Wind-Down Trust Beneficiaries and not unduly prolong its duration. The Wind-Down Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Wind-Down Trust Agreement. The record holders of beneficial interests shall be recorded and set forth in a register maintained by the Wind-Down Trustee expressly for such purpose.

The Wind-Down Trust is intended to qualify as a “grantor trust” for federal income tax purposes to the extent reasonably practicable, with the Wind-Down Trust Beneficiaries treated as grantors and owners of the Wind-Down Trust. However, with respect to any of the assets of the Wind-Down Trust that are subject to potential disputed claims of ownership or uncertain distributions, *or* to the extent “liquidating trust” treatment is otherwise unavailable, the Debtors anticipate that such assets will be subject to disputed ownership fund treatment under Section 1.468B-9 of the Treasury Regulations, that any appropriate elections with respect thereto shall be made, and that such treatment will also be applied to the extent possible for state and local tax purposes. Under such treatment, a separate federal income tax return shall be filed with the IRS for any such account. Any taxes (including with respect to interest, if any, earned in the account) imposed on such account shall be paid out of the assets of the respective account



The Wind-Down Trustee shall be selected by the Committee, in consultation with the Debtors, and shall be identified in the Plan Supplement. The appointment of the Wind-Down Trustee shall be approved in the Confirmation Order, and the Wind-Down Trustee's duties shall commence as of the Effective Date. The Wind-Down Trustee shall administer the distributions to the Wind-Down Trust Beneficiaries and shall serve as a representative of the Estates under section 1123(b) of the Bankruptcy Code for the purpose of enforcing Vested Causes of Action belonging to the Estates that are not released, waived, settled, compromised, or transferred pursuant to the Plan and subject to the limitations set forth in the Plan, including Article IV.F and Article IV.G.

## 5. Responsibilities of Wind-Down Trustee

- (a) Implementing the Wind-Down Trust, and making the distributions contemplated by the Plan;
- (b) Marshalling, marketing for sale, and wind-down of any of the Debtors' assets constituting Wind-Down Trust Assets;
- (c) Filing and prosecuting any objections to Claims or Interests or settling or otherwise compromising such Claims and Interests, if necessary and appropriate, in accordance with the Plan hereof;
- (d) Commencing, prosecuting, or settling claims and Vested Causes of Action;
- (e) Recovering and compelling turnover of the Debtors' property;
- (f) Prosecuting and settling the 3AC Claims, FTX Claims, and Alameda Claims;
- (g) Paying Wind-Down Trust Expenses;
- (h) Abandoning any Debtor assets that cannot be sold or otherwise disposed of for value and where a distribution to Holders of Allowed Claims or Interests would not be feasible or cost-effective in the Wind-Down Trustee's reasonable judgment;



- (i) Preparing and filing post-Effective Date operating reports (including the month in which the Effective Date occurs);
- (j) Filing appropriate tax returns in the exercise of the Wind-Down Trustee's fiduciary obligations;
- (k) Retaining such Professionals as are necessary and appropriate in furtherance of the Wind-Down Trustee's fiduciary obligations; and
- (l) Taking such actions as are necessary and reasonable to carry out the purposes of the Wind-Down Trust, including winding down the Debtors' business affairs.

6. The Wind-Down Trust Oversight Committee

The Wind-Down Trust Oversight Committee shall consist of those parties selected by the Committee and identified in the Plan Supplement, and which, at no time shall consist of greater than seven members.

The Wind-Down Trust Oversight Committee shall have the responsibility to review and advise the Wind-Down Trustee with respect to the liquidation and distribution of the Wind-Down Entity Assets transferred to the Wind-Down Trust in accordance herewith and the Wind-Down Trust Agreement. For the avoidance of doubt, in advising the Wind-Down Trustee, the Wind-Down Trust Oversight Committee shall maintain the same fiduciary responsibilities as the Wind-Down Trustee. Vacancies on the Wind-Down Trust Oversight Committee shall be filled by a Person designated by the remaining member or members of the Wind-Down Trust Oversight Committee from among the Holders of Account Holder Claims. The Wind-Down Trustee shall have the authority to seek an order from the Bankruptcy Court removing or replacing members of the Wind-Down Trust Oversight Committee for cause.

7. Expenses of Wind-Down Trustee

The Wind-Down Trust Expenses shall be paid from the Wind-Down Trust Assets subject to the Wind-Down Reserve and the Non-Released D&O Claim Budget.

8. Insurance; Bond

The Wind-Down Trustee may obtain insurance coverage (in the form of an errors and omissions policy or otherwise) with respect to the liabilities and obligations of the Wind-Down Trustee and the Wind-Down Trust Oversight Committee under the Wind-Down Trust Agreement. Unless otherwise agreed to by the Wind-Down Trust Oversight Committee, the Wind-Down Trustee shall serve with a bond, the terms of which shall be agreed to by the Wind-Down Trust Oversight Committee, and the cost and expense of which shall be paid by the Wind-Down Trust.

9. Fiduciary Duties of the Wind-Down Trustee

Pursuant hereto and the Wind-Down Trust Agreement and the Wind-Down Trustee shall act in a fiduciary capacity on behalf of the interests of all Holders of Claims and Interests that will receive distributions pursuant to Plan.

10. Termination of the Wind-Down Trust

The Wind-Down Trust will terminate on the earlier of: (a) (i) the final liquidation, administration and distribution of the Wind-Down Trust Assets in accordance with the terms of the Wind-Down Trust Agreement and the Plan, and its full performance of all other duties and functions as set forth herein or in the Wind-Down Trust Agreement and (ii) the Chapter 11 Cases of the Debtors have been closed; or (b) the Wind-Down Trustee determines in its reasonable judgment that the Wind-Down Trust lacks sufficient assets and financial resources, after reasonable collection efforts, to complete the duties and powers assigned to him or her under the Plan, the Confirmation Order and/or the Wind-Down Trust Agreement. After (x) the final distributions pursuant hereto, (y) the Filing by or on behalf of the Wind-Down Trust of a certification of dissolution with the Bankruptcy Court, and (z) any other action deemed appropriate by the Wind-Down Trustee, the Wind-Down Trust shall be deemed dissolved for all purposes without the necessity for any other or further actions.

11. Liability of Wind-Down Trustee; Indemnification

Neither the Wind-Down Trustee, the Wind-Down Trust Oversight Committee, their respective members, employees, employers, designees or professionals, or any of their duly designated agents or representatives (each, a “Wind-Down Trust Party” and collectively, the “Wind-Down Trust Parties”) shall be liable for losses, claims, damages, liabilities or expenses in connection with the affairs of the Wind-Down Trust or for the act or omission of any other Wind-Down Trust Party, nor shall the Wind-Down Trust Parties be liable for any act or omission taken or omitted to be taken pursuant to the discretion, powers and authority conferred, or in good faith believed to be conferred by the Wind-Down Trust Agreement or the Plan other than for specific acts or omissions resulting from such Wind-Down Trust Party’s willful misconduct, gross negligence or actual fraud. Subject to the Wind-Down Trust Agreement, the Wind-Down Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee, and the Wind-Down Trust Oversight Committee shall be entitled to enjoy all of the rights, powers, immunities and privileges of an official committee of unsecured creditors. The Wind-Down Trustee or the Wind-Down Trust Oversight Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Wind-Down Trustee nor the Wind-Down Trust Oversight Committee shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Wind-Down Trustee, the Wind-Down Trust Oversight Committee, or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or actual fraud. The Wind-Down Trust shall indemnify and hold harmless the Wind-Down Trust Parties (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys’ fees, disbursements, and related expenses) that such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Wind-Down Trust or the Plan or the discharge of their duties hereunder; *provided, however*, that no such indemnification will be made to such Persons for actions or omissions as a result of willful misconduct, gross negligence, or actual

fraud. Persons dealing or having any relationship with the Wind-Down Trustee shall have recourse only to the Wind-Down Trust Assets and shall look only to the Wind-Down Trust Assets to satisfy any liability or other obligations incurred by the Wind-Down Trustee or the Wind-Down Trust Oversight Committee to such Person in carrying out the terms of the Wind-Down Trust Agreement, and neither the Wind-Down Trustee nor the Wind-Down Trust Oversight Committee, shall have any personal obligation to satisfy any such liability. The Wind-Down Trustee and/or the Wind-Down Trust Oversight Committee members shall not be liable whatsoever except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into the Wind-Down Trust Agreement against any of them. The Wind-Down Trust shall promptly pay expenses reasonably incurred by any Wind-Down Trust Party in defending, participating in, or settling any action, proceeding or investigation in which such Wind-Down Trust Party is a party or is threatened to be made a party or otherwise is participating in connection with the Wind-Down Trust Agreement or the duties, acts or omissions of the Wind-Down Trustee or otherwise in connection with the affairs of the Wind-Down Trust, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Wind-Down Trust Party hereby undertakes, and the Wind-Down Trust hereby accepts his or her undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such exculpated party is not entitled to be indemnified therefor under the Wind-Down Trust Agreement. The foregoing indemnity in respect of any Wind-Down Trust Party shall survive the termination of such Wind-Down Trust Party from the capacity for which they are indemnified.

12. No Liability of the Wind-Down Trust.

On and after the Effective Date, the Wind-Down Trust shall have no liability on account of any Claims or Interests except as set forth herein and in the Wind-Down Trust Agreement. All payments and all distributions made by the Wind-Down Trustee hereunder shall be in exchange for all Claims or Interests against the Debtors.

**I. Sources of Consideration for Plan Distributions**

Distributions under the Plan shall be funded by (i) the proceeds of Purchaser's payment obligations under Sections 2.1 and 2.2 of the Asset Purchase Agreement and distributions of Acquired Coins pursuant to Sections 6.12, and 6.14 of the Asset Purchase Agreement, (ii) the Wind-Down Entity or Wind-Down Trust (as applicable) from the Wind-Down Entity Assets or Wind-Down Trust Assets (as applicable); *provided, however*, that Allowed Professional Fee Claims shall be paid from the Professional Fee Escrow Account in the first instance. The Wind-Down Entity Assets or Wind-Down Trust Assets (as applicable) shall be used to pay the Wind-Down Entity Expenses (including the compensation of the Wind-Down Trustee and any professionals retained by the Wind-Down Trust), and to satisfy payment of Allowed Claims and Interests as set forth in the Plan.

**J. Corporate Existence and Dissolution**

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) in effect prior to the Effective Date, except to the extent such certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation

documents) are amended pursuant to the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings under applicable state or federal law).

On and after the Effective Date, the Wind-Down Entity will be authorized and directed to implement the Plan and any applicable orders of the Bankruptcy Court, and the Wind-Down Entity shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

Upon a certification to be Filed with the Bankruptcy Court by the Wind-Down Trustee of all distributions having been made and completion of all of its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Wind-Down Debtors shall be deemed to be dissolved without any further action by the Wind-Down Debtors, including the Filing of any documents with the secretary of state for the state in which the Wind-Down Debtors are formed or any other jurisdiction. The Wind-Down Trustee, however, shall have authority to take all necessary actions to dissolve the Wind-Down Debtors in and withdraw the Wind-Down Debtors from applicable states.

As soon as practicable after the Effective Date, the Wind-Down Entity shall take such actions as the Wind-Down Entity may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Wind-Down Entity on behalf of any Wind-Down Debtor without need for any action or approval by the shareholders or board of directors or managers of such Debtor. On and after the Effective Date, the Wind-Down Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. Notwithstanding such Debtors' dissolution, such Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

## **K. Corporate Action**

Upon the Effective Date, all actions contemplated under the Plan, Definitive Documents, and Asset Purchase Agreement shall be deemed authorized and approved in all respects, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, managing-members, limited or general partners, or officers of the Debtors, the Wind-Down Debtors, the Wind-Down Trust or any other Entity, including: (1) appointment of the directors, managers, members, and officers for the Wind-Down Debtors as provided herein; (2) the issuances, transfer, and distribution of the Wind-Down Trust Units; (3) the formation of the Wind-Down Trust and appointment of the Wind-Down Trustee and Wind-Down Trust Oversight Committee; (4) the formation of any entities pursuant to and the implementation of the Plan and performance of all actions and transactions contemplated hereby and thereby; (5) the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; and (6) all other acts or actions contemplated by the Plan, Definitive Documents, and Asset Purchase Agreement or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions (including effectuating the Restructuring Transactions Memorandum and the Customer Onboarding Protocol) (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan, Definitive Documents, and Asset Purchase Agreement involving the corporate structure of the Debtors or the Wind-Down Debtors, as applicable, and any corporate action required by the Debtors or the Wind-Down Debtors, as applicable, in connection with the Plan shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the

Wind-Down Debtors, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Wind-Down Debtors or the Wind-Down Trust, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, Securities, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Wind-Down Debtors, and any and all other agreements, documents, Securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Article IV.K shall be effective notwithstanding any requirements under non-bankruptcy law.

**L. Vesting of Assets in the Wind-Down Entity**

Except as otherwise provided in the Plan, or in any agreement, instrument, or other document incorporated in the Plan, notwithstanding any prohibition of assignability under applicable non-bankruptcy law and in accordance with section 1141 of the Bankruptcy Code, on the Effective Date, all property constituting Wind-Down Trust Assets, including all Vested Causes of Action of the Debtors (unless otherwise released, waived, compromised, settled, transferred, or discharged pursuant to the Plan), and any property acquired by any of the Debtors under the Plan shall vest in the Wind-Down Entity, free and clear of all Liens, Claims, charges, or other encumbrances.

**M. Cancellation of Notes, Instruments, Certificates, and Other Documents**

On the later of the Effective Date and the date on which distributions are made pursuant to the Plan (if not made on the Effective Date), except for the purpose of evidencing a right to and allowing Holders of Claims and Interests to receive a distribution under the Plan or to the extent otherwise specifically provided for in the Plan, the Confirmation Order, or any agreement, instrument, or other document entered into in connection with or pursuant to the Plan or the Restructuring Transactions (including, without limitation, the Definitive Documents and the Asset Purchase Agreement), all notes, bonds, indentures, certificates, Securities, shares, purchase rights, options, warrants, collateral agreements, subordination agreements, intercreditor agreements, or other instruments or documents directly or indirectly evidencing, creating, or relating to any indebtedness or obligations of, or ownership interest in, the Debtors, giving rise to any Claims against or Interests in the Debtors or to any rights or obligations relating to any Claims against or Interests in the Debtors shall be deemed cancelled without any need for a Holder to take further action with respect thereto.

**N. Effectuating Documents; Further Transactions**

On and after the Effective Date, the Wind-Down Debtors, and its directors, managers, partners, officers, authorized persons, and members thereof, and the Wind-Down Trust and Wind-Down Trustee are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, Definitive Documents, and Asset Purchase Agreement, in the name of and on behalf of the Wind-Down Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

**O. Section 1146(a) Exemption**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Wind-Down Debtor, the Wind-Down Trust, the Purchaser, or to any other Entity) of property under the Plan, Definitive Documents, and Asset Purchase Agreement or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or



## P. Preservation of Rights of Action

The Wind-Down Trust may pursue such Causes of Action, as appropriate, in accordance with the best interests of the beneficiaries of the Wind-Down Trust and in accordance with the Wind-Down Trust Agreement and the Plan. **No Entity may rely on the absence of a specific reference in the Schedules of Assets and Liabilities or Statement of Financial Affairs, the Plan, the Plan Supplement, the Disclosure Statement, or the Schedule of Retained Causes of Action to any Cause of Action against it as any indication that the Debtors, the Wind-Down Debtors or the Wind-Down Trust, as applicable, will not pursue any and all available Causes of Action of the Debtors against it. The Wind-Down Trust, on behalf of the Debtors and the Wind-Down Debtors, expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise provided in the Plan, including Article VIII of the Plan.** Unless any Cause of Action of the Debtors is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or pursuant to a Final Order, the Wind-Down Trust, on behalf of the Debtors and Wind-Down Debtors and in accordance with the Wind-Down Trust Agreement, expressly reserves all such Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation or Consummation.



**Q. Election to Contribute Third-Party Claims**

## R. Contribution of Contributed Third-Party Claims

## S. Closing the Chapter 11 Cases

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irrespective of whether such Claims or Interests were Filed or such adversary proceeding was commenced against a Debtor whose Chapter 11 Case was closed.

## **ARTICLE V.**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **A. Assumption and Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy other than the Side-A Policy. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

#### **B. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or the Wind-Down Debtors, as applicable, under such Executory Contract or Unexpired Lease. Without limiting the general nature of the foregoing, and notwithstanding any non-bankruptcy law to the contrary, the Debtors and Wind-Down Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to any rejected Executory Contract or Unexpired Lease.

#### **C. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Counterparties to Executory Contracts or Unexpired Leases listed subject to rejection under the Plan shall be served with a notice of rejection of Executory Contracts and Unexpired Leases with the Plan Supplement. Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Claims, Noticing, and Solicitation Agent and served on the Debtors or Wind-Down Entity, as applicable, no later than thirty days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, or the Wind-Down Entity, the Estates, or their property without the need for any objection by the Wind-Down Entity or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed released, and be subject to the permanent injunction set forth in Article VIII.D of the Plan, including any Claims against any**

**Debtor listed on the Debtors' schedules as unliquidated, contingent, or disputed.** All Allowed Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease shall be treated as General Unsecured Claims in accordance with Article III.C of the Plan.

**D. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed**

The Debtors, the Wind-Down Entity, or the Purchaser, as applicable pursuant to the Asset Purchase Agreement, shall pay Cures, if any, on the Effective Date. The Debtors shall provide notice of the amount and timing of payment of any such Cure to the parties to the applicable assumed Executory Contracts or Unexpired Leases as part of the Plan Supplement. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure that differ from the ordinary course amounts paid or proposed to be paid by the Debtors, the Wind-Down Entity, or the Purchaser shall be dealt with in the ordinary course of business and, if needed, shall be Filed with the Claims, Noticing, and Solicitation Agent on or before thirty days after the Effective Date. **If any counterparty to an Executory Contract or Unexpired Lease does not receive a notice of assumption and applicable cure amount, such counterparty shall have until on or before thirty days after the Effective Date to bring forth and File a request for payment of Cure.** Any such request that is not timely Filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Wind-Down Debtor or the Wind-Down Entity, without the need for any objection by the Wind-Down Entity or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied and released upon payment by the Debtors or the Wind-Down Entity or the Purchaser of the Cure in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty); *provided, however,* that nothing herein shall prevent the Wind-Down Entity or the Purchaser, as applicable, from paying any Cure Claim despite the failure of the relevant counterparty to File such request for payment of such Cure. The Wind-Down Entity or the Purchaser may also settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be Filed with the Bankruptcy Court on or before thirty days after the Effective Date. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' first scheduled omnibus hearing for which such objection is timely Filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

In the event of a dispute regarding: (1) the amount of any Cure Claim, (2) the ability of the Wind-Down Debtors, Purchaser, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed (or assumed and assigned, as applicable), or (3) any other matter pertaining to assumption or assignment, then any disputed Cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made as soon as reasonably practicable following, and in accordance with, the entry of a Final Order of the Bankruptcy Court resolving such dispute or as may be agreed upon by the Debtors, the Wind-Down Entity, or Purchaser, as applicable, and the counterparty to the Executory Contract or Unexpired Lease, and any such unresolved dispute shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise or assignment of any Executory Contract or Unexpired Lease to the Purchaser and full payment of any applicable Cure pursuant to this Article V.D, or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty), shall result in the full release and satisfaction of any Cures,

Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assumed and assigned in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure has been fully paid pursuant to this Article V.D, in the amount and at the time in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty), shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, in the event that any counterparty to an Executory Contract or Unexpired Lease receives a notice of assumption and applicable proposed Cure amount, and disputes the Debtors' proposed Cure amount, such party shall not be required to File a Proof of Claim with respect to such dispute. Any counterparty to an Executory Contract or Unexpired Lease that does not receive a notice or applicable proposed Cure amount, and believes a Cure amount is owed, shall have thirty days after the Effective Date to File a Proof of Claim with respect to such alleged Cure amount, which Claim shall not be expunged until such Cure dispute is resolved.**

#### **E. Insurance Policies and Surety Bonds**

Each D&O Liability Insurance Policy (including, without limitation, any "tail policy" and all agreements, documents, or instruments related thereto) other than the Side-A Policy shall be assumed, in their entirety, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date, pursuant to sections 105 and 365 of the Bankruptcy Code with the Wind-Down Entity being authorized to pursue any proceeds thereof on behalf of the Debtors or the Wind-Down Entity. The Side-A Policy shall ride through these Chapter 11 Cases with the Debtors, and the Wind-Down Entity preserves all avoidance and other actions in connection with the premium paid thereunder. All beneficiaries under the D&O Insurance Policies reserve their rights under such D&O Insurance Policies subject to the limitations set forth in this Plan.

The Debtors or the Wind-Down Entity, as applicable, shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policy (including, without limitation, any "tail policy" and all agreements, documents, or instruments related thereto) in effect prior to the Effective Date, and any current and former directors, officers, managers, and employees of the Debtors who served in such capacity at any time before or after the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy subject to the terms thereof regardless of whether such directors, officers, managers, and employees remain in such positions after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Debtors or the Wind-Down Entity shall retain the ability to supplement such D&O Liability Insurance Policy as the Debtors or Wind-Down Entity may deem necessary, subject to the prior written consent of the Wind-Down Entity. Notwithstanding anything to the contrary contained in the Plan, the Wind-Down Trust shall be entitled to pursue avoidance of the premium paid for the XL Specialty Insurance Company Cornerstone A-Side Management Liability Insurance Policy No. ELU184179-22, and nothing in this Plan shall be deemed a waiver or abrogation of any such rights.

The Debtors shall continue to satisfy their obligations under their surety bonds and insurance policies in full and continue such programs in the ordinary course of business. Each of the Debtors' surety bonds and insurance policies, and any agreements, documents, or instruments relating thereto shall be treated as Executory Contracts under the Plan. On the Effective Date: (a) the Debtors shall be deemed to have assumed all such surety bonds and insurance policies and any agreements, documents, and instruments relating thereto in their entirety; *provided* that the Debtors have assumed all indemnity agreements and cash

collateral agreements related to the surety bonds and (b) such surety bonds and insurance policies and any agreements, documents, or instruments relating thereto shall revert in the applicable Wind-Down Debtor(s) unaltered.

**F. Reservation of Rights**

Nothing contained in the Plan or the Plan Supplement (unless otherwise explicitly provided) shall constitute an admission by the Debtors or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Wind-Down Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Wind-Down Entity, as applicable, shall have forty-five days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease, including by rejecting such contract or lease effective as of the Confirmation Date.

**G. Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**H. Contracts and Leases Entered into After the Petition Date**

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed under section 365 of the Bankruptcy Code, will be performed by the applicable Debtor or Wind-Down Debtor liable thereunder in the ordinary course of its business. Such contracts and leases that are not rejected under the Plan shall survive and remain unaffected by entry of the Confirmation Order.

**ARTICLE VI.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Timing and Calculation of Amounts to Be Distributed**

Except (1) as otherwise provided herein, (2) upon a Final Order, or (3) as otherwise agreed to by the Debtors, the Purchaser, or the Wind-Down Entity, as the case may be, and the Holder of the applicable Claim, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the next Distribution Date after such Claim becomes, as applicable, an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim shall receive the full amount of distributions that the Plan provides for Allowed Claims in the applicable Class from the Distribution Agent. In the event that any payment or distribution under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or distribution may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as specifically provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.







as set forth in a Final Order, no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Interest until all of the Disputed Claim or Interest has become an Allowed Claim or Interest or has otherwise been resolved by settlement or Final Order; *provided* that, if the Wind-Down Entity does not dispute a portion of an amount asserted pursuant to an otherwise Disputed Claim or Interest, the Distribution Agent may make a partial distribution on account of that portion of such Claim or Interest that is not Disputed at the time and in the manner that the Distribution Agent makes distributions to similarly situated Holders of Allowed Claims or Interests pursuant to the Plan. Any dividends or other distributions arising from property distributed to Holders of Allowed Claims or Interests, as applicable, in a Class and paid to such Holders under the Plan shall also be paid, in the applicable amounts, to any Holder of a Disputed Claim or Interest, as applicable, in such Class that becomes an Allowed Claim or Interest after the date or dates that such dividends or other distributions were earlier paid to Holders of Allowed Claims or Interests in such Class.

## 5. De Minimis Distributions; Minimum Distributions

The Distribution Agent shall not make any Cash distributions to any Holder of an Allowed Claim or Interest pursuant to Article III.C.1-11 of this Plan on account of such Allowed Claim or Interest if such distribution is valued, in the reasonable discretion of the Distribution Agent, at less than \$1.00, and each Holder of an Allowed Claim or Interest to which this limitation applies shall not be entitled to any distributions under the Plan. Notwithstanding anything to the contrary in this Plan, there shall be no minimum distribution threshold on account of distributions of any Cryptocurrency to Holders of Allowed Account Holder Claims and Allowed OpCo General Unsecured Claims.

## 6. Undeliverable Distributions and Unclaimed Property

In the event that either (a) a distribution to any Holder is returned as undeliverable or (b) the Holder of an Allowed Claim or Interest does not respond to a request by the Debtors or the Distribution Agent for information necessary to facilitate a particular distribution, no distribution to such Holder shall be made unless and until the Distribution Agent has determined the then-current address of such Holder or received the necessary information to facilitate a particular distribution, at which time such distribution shall be made to such Holder without interest, dividends, or other accruals of any kind; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code on the date that is one year after the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Wind-Down Entity automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable local, state, federal, or foreign escheat, abandoned, or unclaimed property laws to the contrary), and the Claim or Interest of any Holder to such property or interest in property shall not be entitled to any distributions under the Plan.

## 7. Manner of Payment Pursuant to the Plan

At the option of the Distribution Agent, any Cash payment to be made hereunder may be made by check, wire transfer, automated clearing house, credit card, or as otherwise provided in applicable agreements.

## 8. Distributions of Net Owed Coins; Additional Bankruptcy Distributions

As a general matter, the Purchaser will allocate each Account Holder's Net Owed Coins to its account on the Binance.US Platform, and each Holder of OpCo General Unsecured Claim's Pro Rata share of the Distributable Cryptocurrency (in Cash) to its account on the Binance.US Platform in accordance with, and subject to, the provisions of Section 6.12 of the Asset Purchase Agreement.

As a general matter, the Customer Onboarding Protocol will provide that Purchaser will make Additional Bankruptcy Distributions to Transferred Creditors corresponding to their Pro Rata shares of such Additional Bankruptcy Distribution (if such Additional Bankruptcy Distribution is in Cryptocurrency, based on the Transferred Cryptocurrency Value of the Cryptocurrency included in such Additional Bankruptcy Distribution), all in accordance with any applicable Post-Bankruptcy Statement (as defined in the Asset Purchase Agreement).

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim does not become a Transferred Creditor prior to the date that is three (3) months following the later of the Closing Date or the date on which the terms and conditions for the Binance.US Platform are made available for such Person to accept (as provided in the Customer Onboarding Protocol), then Purchaser shall convert any Cryptocurrency allocable to such Person into U.S. Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such U.S. Dollars, together with any cash or others assets in respect of such Persons, to the Debtors within five (5) Business Days, for further distribution by the Debtors in accordance with this Plan and the Customer Onboarding Protocol.

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim is located in an Unsupported Jurisdiction (as defined in the Asset Purchase Agreement), then the Net Owed Coins, if applicable, and Additional Bankruptcy Distributions allocable to such Person shall be handled pursuant to Section 6.12(b) or, if applicable, Section 6.14(d) of the Asset Purchase Agreement.

Purchaser shall have no responsibility to make any distributions other than as contemplated by Sections 6.12 and 6.14 of the Asset Purchase Agreement.

#### **D. Compliance Matters**

In connection with the Plan, to the extent applicable, the Debtors, the Wind-Down Entity, any Distribution Agent, and any other applicable withholding and reporting agents shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Wind-Down Entity, the Distribution Agent, and any other applicable withholding and reporting agents shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including wind-down a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms that are reasonable and appropriate; *provided* that the Wind-Down Entity and the Distribution Agent, as applicable, shall request appropriate documentation from the applicable distributees and allow such distributees a reasonable amount of time to respond. The Debtors, the Wind-Down Entity, the Distribution Agent, and any other applicable withholding and reporting agents reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

#### **E. Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim, asserted in government issued currency (for the avoidance of doubt, not including any Cryptocurrency) other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using

the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

## **F. Claims Paid or Payable by Third Parties**

### **1. Claims Paid by Third Parties**

The Debtors or the Wind-Down Entity, as applicable, shall reduce a Claim or Interest, and such Claim or Interest (or portion thereof) shall be disallowed without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim or Interest receives a payment on account of such Claim or Interest from a party that is not a Debtor or Wind-Down Debtor (or other Distribution Agent), as applicable, including any payments made in connection with the Sale Transaction. To the extent a Holder of a Claim or Interest receives a distribution on account of such Claim or Interest and receives payment from a party that is not a Debtor or a Wind-Down Debtor (or other Distribution Agent), including payments made in connection with the Sale Transaction, as applicable, on account of such Claim or Interest, such Holder shall, within ten Business Days of receipt thereof, repay, return, or deliver any distribution held by or transferred to the Holder to the applicable Wind-Down Debtor to the extent the Holder's total recovery on account of such Claim or Interest from the third party and under the Plan exceeds the amount of such Claim or Interest as of the date of any such distribution under the Plan. The failure of such Holder to timely repay, return, or deliver such distribution shall result in the Holder owing the applicable Wind-Down Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the ten-Business Day grace period specified above until the amount is repaid.

### **2. Claims Payable by Third Parties**

No distributions under the Plan shall be made on account of an Allowed Claim or Interest that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim or Interest has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim or Interest (if and to the extent adjudicated by a court of competent jurisdiction or otherwise settled), then immediately upon such payment, such Claim or Interest may be expunged or reduced on the Claims Register by the Claims, Noticing, and Solicitation Agent to the extent of any such payment without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

### **3. Applicability of Insurance Policies**

Except as otherwise provided herein, payments to Holders of Claims or Interests shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any rights, defenses, or Cause of Action that the Debtors, the Wind-Down Entity or any other Entity may hold against any other Entity, including insurers, under any policies of insurance, agreements related thereto, or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers under the applicable insurance policies, agreements related thereto, and applicable non-bankruptcy law.

## **G. Setoffs and Recoupment**

Except as otherwise expressly provided for herein, each Debtor, Wind-Down Debtor, the Wind-Down Entity, or such Entity's designee as instructed by such Debtor, Wind-Down Entity, as applicable, may, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code),

applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, set off against or recoup from an Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature whatsoever that the Debtor, Wind-Down Debtor or Wind-Down Entity, as applicable, may have against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised, settled, or released on or prior to the Effective Date (whether pursuant to the Plan or otherwise). Notwithstanding the foregoing, except as expressly stated in Article VIII of this Plan, neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Debtors or the Wind-Down Entity of any such Claims, rights, or Causes of Action the Debtors or the Wind-Down Entity may possess against such Holder.

#### **H. Allocation between Principal and Accrued Interest**

Except as otherwise provided herein, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof and as determined for federal income tax purposes) and second, to the extent the consideration exceeds the principal amount of the Allowed Claims, to the remaining portion of such Allowed Claim if any.

### **ARTICLE VII.**

#### **PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS AND INTERESTS**

##### **A. Disputed Claims Process**

After the Effective Date, the Wind-Down Entity, and any party-in-interest, shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim or Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim or Interest. If a Holder of a Claim or Interest in Class disputes the amount of their Claim or Interest as listed in the Schedules, the Holder should notify the Debtors or the Wind-Down Entity of such dispute. If the Debtors and the Holder agree to an amended Claim amount prior to the Effective Date, the Debtors shall file amended Schedules prior to the Effective Date. If between the Confirmation Date and the Effective Date, the dispute cannot be consensually resolved, the Holder may seek (by letter to the Court) to have the claim or interest dispute resolved before the Bankruptcy Court (and, with the consent of the Debtors, before any other court or tribunal with jurisdiction over the parties). After the Effective Date, the creditor may seek to have the claim dispute resolved before the Bankruptcy Court or any other court or tribunal with jurisdiction over the parties.

Unless relating to a Claim or Interest expressly Allowed pursuant to the Plan, all Proofs of Claim filed in these Chapter 11 Cases shall be considered objected to and Disputed without further action by the Debtors. Upon the Effective Date, all Proofs of Claim filed against the Debtors, regardless of the time of filing, and including Proofs of Claim filed after the Effective Date, shall be deemed withdrawn and expunged, other than as provided below. Notwithstanding anything in this Plan to the contrary: (1) all Claims against the Debtors that result from the Debtors' rejection of an Executory Contract or Unexpired Lease; (2) Claims filed to dispute the amount of any proposed Cure pursuant to section 365 of the Bankruptcy Code; and (3) Claims that the Debtors seek to have determined by the Bankruptcy Court, shall

in all cases be determined by the Bankruptcy Court, if not otherwise resolved through settlement with the applicable claimant.

Notwithstanding any provision herein to the contrary, nothing in the Disclosure Statement, Plan, or Confirmation Order grants the Bankruptcy Court with jurisdiction over any police and regulatory actions by the SEC, and the SEC shall retain the power and authority to commence and continue any such actions against any person or entity, including without limitation, the Debtors, in any forum with jurisdiction, provided, however, that enforcement of any money judgment against the Debtors must be in accordance with the Plan. In addition, the SEC may file any proof of claim by the Government Bar Date or such later date as ordered by the Bankruptcy Court and amend its proof of claim upon determination of liability on its claims. Any objection to such claim shall be in accordance with Bankruptcy Rule 3007, and such claim shall not automatically be deemed objected to, withdrawn, or expunged.

On the Effective Date, the Debtors or Wind-Down Trustee, as applicable, may establish one or more accounts or funds to hold and dispose of certain assets, pursue certain litigation (including the Causes of Action preserved under the Plan or otherwise vesting in the Wind-Down Trust), and/or satisfy certain Claims (including Claims that are contingent or have not yet been Allowed). For any such account or fund, the Debtors or the Wind-Down Trustee, as applicable, may take the position that grantor trust treatment applies in whole or in part. To the extent such treatment applies to any such account or fund, for all U.S. federal income tax purposes, the beneficiaries of any such account or fund would be treated as grantors and owners thereof, and it is intended, to the extent reasonably practicable, that any such account or fund would be classified as a liquidating trust under section 301.7701-4 of the Treasury Regulations. Alternatively, any such account or fund may be subject to the tax rules that apply to “disputed ownership funds” under 26 C.F.R. 1.468B-9. If such rules apply, such assets would be subject to entity-level taxation, and the Debtors and Wind-Down Trustee would be required to comply with the relevant rules.

## **B. Objections to Claims or Interests**

Except as otherwise specifically provided in the Plan, after the Effective Date, the Wind-Down Entity shall have the sole authority to: (1) File, withdraw, or litigate to judgment, any objections to Claims or Interests; and (2) settle or compromise any Disputed Claim or Interest without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, the Wind-Down Entity shall have and retain any and all rights and defenses each such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Article IV.P of the Plan.

Any objections to Claims or Interests shall be Filed on or before the Claims Objection Bar Date. For the avoidance of doubt, the Bankruptcy Court may extend the time period to object to Claims or Interests set forth in this paragraph at any time, including before or after the expiration of one hundred eighty days after the Effective Date, in its discretion or upon request by the Debtors or any party in interest.

## **C. Estimation of Claims**

Before or after the Effective Date, the Debtors or the Wind-Down Entity, as applicable, may (but are not required to), at any time, request that the Bankruptcy Court estimate any Disputed Claim or Interest that is contingent or unliquidated pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any party previously has objected to such Disputed Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under sections 157 and 1334 of the Judicial Code to estimate any such Disputed Claim or Interest, including during the litigation of any objection to any Disputed Claim or Interest or during the pendency of any appeal relating to such objection. Notwithstanding any provision



#### D. No Distributions Pending Allowance

### E. Distributions After Allowance

### F. No Interest

### G. Adjustment to Claims and Interests without Objection

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seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

#### **H. Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date.

#### **I. Disallowance of Claims or Interests**

Any Claims or Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors or the Wind-Down Entity, as applicable.

**Except as otherwise provided herein or as agreed to by the Debtors or the Wind-Down Entity, any and all Proofs of Claim Filed after the Bar Date shall be deemed disallowed and expunged as of the Effective Date without any further notice to, or action, order, or approval of, the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.**

#### **J. Amendments to Proofs of Claim**

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Proof of Claim or Proof of Interest may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Wind-Down Entity, and any such new or amended Proof of Claim or Proof of Interest Filed shall be deemed disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court.

### **ARTICLE VIII.**

#### **EFFECT OF CONFIRMATION OF THE PLAN**

##### **A. Releases by the Debtors**

**Notwithstanding anything contained in the Plan to the contrary, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Debtors, the Wind-Down Debtors, and their Estates, the Wind-Down Entity, and in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of, the foregoing Entities, from any and all Causes of Action, including any derivative claims, asserted or assertable on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, that the Debtors would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their**

capital structure, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Chapter 11 Cases and related adversary proceedings, the Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, of the releases described in this Article VIII.A by the Debtors, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.A is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to the extent contemplated by Article IV.E and Article IV.F of the Plan, a bar to any of the Debtors or Wind-Down Debtors or their respective Estates or Wind-Down Entity asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

Notwithstanding anything to the contrary contained herein, nothing in this Plan shall release, waive, or otherwise limit the (i) rights, duties, or obligations of the Purchaser under the Asset Purchase Agreement or the Definitive Documents and (ii) the Non-Released D&O Claims, but such Non-Released D&O Claims shall remain subject to the limitations contained in Article IV.E and Article IV.F of this Plan.

## **B. Releases by Holders of Claims and Interests**

Except as expressly set forth in the Plan, effective on the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives, from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of any of the Debtors, that such Entity would have been legally entitled to assert in its own right (whether individually or collectively or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the

### C. Exculpation

The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan

**D. Injunction**

The assets of the Debtors and of the Wind-Down Entity shall be used for the satisfaction of expense obligations and the payment of Claims and Interests only in the manner set forth in this Plan and shall not be available for any other purpose. All Persons and Entities who have held, hold, or may hold Claims or Interests based upon any act, omission, transaction, or other activity of any kind or nature related to the Debtors, the Wind-Down Entity, or the Debtors' Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in the Plan or the Confirmation Order, shall be precluded and permanently enjoined on and after the Effective Date from interfering with the use and distribution of the Debtors' assets in the manner contemplated by the Plan.

In addition, as of the Effective Date and subject to the occurrence of the Effective Date, except as otherwise specifically provided in this Plan or the Confirmation Order, all Persons and Entities who have held, hold, or may hold Claims or Interests that are fully satisfied pursuant to the Plan or any Claim or Interest that is subject to the releases and exculpations set forth in Article VIII.B and Article VIII.C of this Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims or Interests, except for the receipt of the payments or distributions that are contemplated by this Plan.

**E. Release of Liens**

Except as otherwise provided in the Plan, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan or Confirmation Order on the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or Wind-Down Debtor, as applicable, and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as requested by the Debtors or Wind-Down Entity to evidence the release of such Lien, including the execution, delivery, and filing or recording of such documents evidencing such releases. The presentation or filing of the Confirmation Order to or with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

**F. OSC and SEC**

Notwithstanding any language to the contrary herein, no provision shall (a) preclude the OSC or the SEC from enforcing its police or regulatory powers; or (b) enjoin, limit, impair or delay the OSC or SEC from commencing or continuing any claims, causes of action, proceeding, or investigations against any non-Debtor person or non-Debtor entity in any forum.

**G. Protection against Discriminatory Treatment**

As provided by section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Entity, including Governmental Units, shall discriminate against any Wind-Down Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, any

Upon the occurrence of the Effective Date, the Debtors' books and records shall be transferred to the Wind-Down Entity, which shall continue to preserve all financial books and records, emails, and other financial documents relating to the Debtors' business that are currently in the Debtors' possession. The Wind-Down Trust shall not destroy or otherwise abandon any such documents or records without providing advance notice to the U.S. Securities and Exchange Commission (c/o Therese Scheuer, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, ScheuerT@SEC.GOV) and seeking further authorization from this Court. Nothing in this Plan or the Confirmation Order shall affect the obligations of the pre-Effective Date Debtors, the Wind-Down Entity, and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code, or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. **All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.**

## CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

1. The Bankruptcy Court shall have entered the Confirmation Order, which shall be in a form and substance reasonably satisfactory to the Debtors and the Committee, and subject to the consent rights of Purchaser under the Asset Purchase Agreement, and such order shall be a Final Order and in full force and effect.

- ## B. Waiver of Conditions Precedent

### C. Effect of Non-Occurrence of Conditions to Consummation

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## **ARTICLE X.**

### **MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

#### **A. Modification of Plan**

Subject to the limitations and terms contained in the Plan and Purchaser's consent rights under the Asset Purchase Agreement, the Debtors, with the consent of the Committee, reserve the right to (1) amend or modify the Plan before the entry of the Confirmation Order, in accordance with the Bankruptcy Code and the Bankruptcy Rules and (2) after the entry of the Confirmation Order, the Debtors or the Wind-Down Entity, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein.

#### **B. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall constitute approval of all modifications or amendments to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

#### **C. Revocation or Withdrawal of Plan**

The Debtors reserve the right, with the consent of the Committee, to revoke or withdraw the Plan with respect to any or all Debtors before the Confirmation Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (1) the Plan will be null and void in all respects; (2) any settlement or compromise not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Classes of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effectuated by the Plan, and any document or agreement executed pursuant to the Plan will be null and void in all respects; and (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity, (b) prejudice in any manner the rights of any Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

## **ARTICLE XI.**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Claims or other Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed or assumed and assigned; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;

4. ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor or the Estates that may be pending on the Effective Date;

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, and other agreements or documents created in connection with the Plan; *provided* that the Bankruptcy Court shall not retain jurisdiction over disputes concerning documents contained in the Plan Supplement that have a jurisdictional, forum selection, or dispute resolution clause that refers disputes to a different court;

7. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or an Interest for amounts not timely repaid pursuant to Article VI of the Plan; (b) with respect to the releases, injunctions, and other provisions contained in Article VIII of the Plan, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) anything that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan and the Confirmation Order; or (d) related to section 1141 of the Bankruptcy Code;

11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

13. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

14. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases with respect to any Entity, and resolve any cases, controversies, suits, or disputes that may arise in connection with any Entity's rights arising from or obligations incurred in connection with the Plan;

15. hear and determine matters concerning local, state, federal, and foreign taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

16. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

17. enforce all orders previously entered by the Bankruptcy Court; and

18. hear and determine any other matters related to the Chapter 11 Cases and not inconsistent with the Bankruptcy Code or the Judicial Code.

Nothing herein limits the jurisdiction of the Bankruptcy Court to interpret and enforce the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, or the Disclosure Statement, without regard to whether the controversy with respect to which such interpretation or enforcement relates may be pending in any state or other federal court of competent jurisdiction.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article XI, the provisions of this Article XI shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

Unless otherwise specifically provided herein or in a prior order of the Bankruptcy Court, the Bankruptcy Court shall have exclusive jurisdiction to hear and determine disputes concerning Claims against or Interests in the Debtors that arose prior to the Effective Date.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Entity, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, exculpations, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be

as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or Interest has voted on the Plan.

**B. Additional Documents**

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Wind-Down Entity, and all Holders of Claims and Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

**C. Payment of Statutory Fees**

All fees and applicable interest payable pursuant to section 1930 of the Judicial Code and 31 U.S.C. § 3717, as applicable, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by each of the Wind-Down Debtors (or the Distribution Agent on behalf of the Wind-Down Entity) for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first.

**D. Dissolution of Statutory Committees**

On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases; *provided*, however, that such committees will remain in existence for the limited purposes of (a) pursuing, supporting, or otherwise participating in, any outstanding appeals in the Chapter 11 Cases; and (b) filing, objecting, or otherwise participating in, any final fee applications of Professionals.

**E. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests, unless and until the Effective Date has occurred.

**F. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of each such Entity.

**G. Service of Documents**

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Wind-Down Debtors shall be served on:

Wind-Down Debtors

**Voyager Digital Holdings, Inc.**

33 Irving Place  
New York, New York 10003  
Attention: David Brosgol  
General Counsel,  
E-mail address: dbrosgol@investvoyager.com

with copies for information only (which shall not constitute notice) to:

Counsel to the Debtors

**Kirkland & Ellis LLP**

**Kirkland & Ellis International LLP**

601 Lexington Avenue  
New York, New York 10022  
Attention: Joshua A. Sussberg, P.C., Christopher Marcus,  
P.C., Christine A. Okike, P.C., and Allyson B. Smith

Counsel to the Committee

**McDermott Will & Emery LLP**

One Vanderbilt Avenue  
New York, New York 10017  
Attention: Darren Azman

**H. Entire Agreement; Controlling Document**

Except as otherwise indicated, on the Effective Date, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations with respect to the subject matter of the Plan, all of which will have become merged and integrated into the Plan; *provided, however*, that notwithstanding the foregoing or anything to the contrary herein, to the extent there is any conflict between the Plan and the Confirmation Order, on the one hand, and the Asset Purchase Agreement, on the other hand, the Asset Purchase Agreement shall govern solely in the event the Sale Transaction is consummated. Except as set forth in the Plan, in the event that any provision of the Disclosure Statement, the Plan Supplement, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

**I. Plan Supplement**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Claims, Noticing, and Solicitation Agent at <https://cases.stretto.com/Voyager> or the Bankruptcy Court's website at <http://www.nysb.uscourts.gov>. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

## J. Non-Severability

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, subject to the Purchaser's consent rights under the Asset Purchase Agreement prior to the Outside Date, shall have the power to alter and interpret such term or provision to make it valid or enforceable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' consent, consistent with the terms set forth herein; and (3) non-severable and mutually dependent.

## K. Votes Solicited in Good Faith

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors, and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties nor individuals or the Wind-Down Debtors will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan or any previous plan.

## L. Waiver or Estoppel

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed prior to the Confirmation Date.



Dated: January 10, 2023

VOYAGER DIGITAL HOLDINGS, INC.  
on behalf of itself and all other Debtors

---

/s/ *Stephen Ehrlich*

Stephen Ehrlich  
Co-Founder and Chief Executive Officer  
Voyager Digital Holdings, Inc.



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	
	)	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC. <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 22-10943 (MEW)
Debtors.	)	
	)	(Jointly Administered)

**THIRD AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND  
ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Joshua A. Sussberg, P.C.  
Christopher Marcus, P.C.  
Christine A. Okike, P.C.  
Allyson B. Smith (admitted *pro hac vice*)  
KIRKLAND & ELLIS LLP  
KIRKLAND & ELLIS INTERNATIONAL LLP  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

**NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE,  
COMMITMENT, OR LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY  
OTHER PARTY IN INTEREST, AND THIS PLAN IS SUBJECT TO APPROVAL BY THE  
BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS. THIS PLAN IS NOT AN  
OFFER WITH RESPECT TO ANY SECURITIES.**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, LTD. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

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## **INTRODUCTION**

Voyager Digital Holdings, Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (each a “Debtor” and, collectively, the “Debtors”) propose this third amended joint plan (the “Plan”) for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings set forth in Article I.A of the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, properties and operations, projections, risk factors, a summary and analysis of this Plan, and certain related matters.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **ARTICLE I.**

### **DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES**

#### **A. Defined Terms**

Capitalized terms used in this Plan have the meanings ascribed to them below.

1. “3AC” means Three Arrows Capital, Ltd and any of its Affiliates or subsidiaries.
2. “3AC Claims” means the claims or causes of action asserted or assertable by the Debtors against 3AC, whether in the 3AC Liquidation Proceeding or otherwise.
3. “3AC Liquidation Proceeding” means that certain liquidation proceeding captioned *In the Matter of Three Arrows Capital Ltd. and in the Matter of Sections 159(1) and 162(1)(a) and (b) of the Insolvency Act 2003*, Claim No. BVIHC(COM)2022/0119 before the Eastern Caribbean Supreme Court in the High Court of Justice in the British Virgin Islands and the chapter 15 foreign recognition proceeding captioned *In re Three Arrows Capital, Ltd.*, No. 22-10920 (Bankr. S.D.N.Y. Jul. 1, 2022).
4. “3AC Loan” means that loan of 15,250 Bitcoins and 350 million USDC to 3AC pursuant to that certain master loan agreement dated March 4, 2022 by and between 3AC, as borrower, and OpCo and HTC Trading, Inc., as lenders.
5. “3AC Recovery” means the recovery, if any, of the Debtors from 3AC on account of the 3AC Claims.
6. “Account” means any account at OpCo held by an Account Holder relating to Cryptocurrency, which Account is identified in the Debtors’ books and records as holding Cryptocurrency as of the Petition Date.

7. “*Account Holder*” means any Person or Entity who holds an Account with OpCo as of the Petition Date.

8. “*Account Holder Claim*” means any Claim against the Debtors that is held by an Account Holder on account of such Holder’s Account.

9. “*Acquired Assets*” has the meaning ascribed to it in the Asset Purchase Agreement.

10. “*Acquired Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

11. “*Acquired Coins Value*” has the meaning ascribed to it in the Asset Purchase Agreement.

12. “*Additional Bankruptcy Distribution*” has the meaning ascribed to it in the Asset Purchase Agreement.

13. “*Administrative Claim*” means a Claim against a Debtor for the costs and expenses of administration of the Chapter 11 Cases arising on or after the Petition Date and prior to the Effective Date pursuant to section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors’ business and (b) Allowed Professional Fee Claims.

14. “*Administrative Claims Bar Date*” means the deadline for Filing requests for payment of Administrative Claims (other than requests for payment of Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), which: (a) with respect to Administrative Claims other than Professional Fee Claims, shall be thirty days after the Effective Date; and (b) with respect to Professional Fee Claims, shall be forty-five days after the Effective Date.

15. “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code. With respect to any Person that is not a Debtor, the term “*Affiliate*” shall apply to such Person as if the Person were a Debtor.

16. “*Alameda*” means Alameda Ventures Ltd., along with its Affiliates and subsidiaries.

17. “*Alameda Claims*” means the claims or causes of action asserted or assertable by the Debtors against Alameda, whether in the FTX Bankruptcy Proceeding or otherwise.

18. “*Alameda Loan Agreement*” means that certain unsecured loan agreement, dated as of June 21, 2022, as amended, restated, amended and restated, modified, or supplemented from time to time, by and among Voyager Digital Holdings, Inc., as the borrower, Voyager, as the guarantor, and Alameda, as the lender thereto.

19. “*Alameda Loan Facility*” means that certain unsecured loan facility provided for under the Alameda Loan Agreement.

20. “*Alameda Loan Facility Claims*” means any Claim against any Debtor derived from, based upon, or arising under the Alameda Loan Agreement and any fees, costs, and expenses that are reimbursable by any Debtor pursuant to the Alameda Loan Agreement.

21. “*Alameda Recovery*” means the recovery, if any, of the Debtors from Alameda on account of the Alameda Claims.

23. “*Asset Purchase Agreement*” means that certain asset purchase agreement dated as of December 18, 2022 by and between BAM Trading Services Inc. (d/b/a Binance.US) as Purchaser and Voyager Digital, LLC as Seller.

25. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as effect or hereafter amended.

27. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated by the United States Supreme Court under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

29. “*Bar Date Order*” means the *Order (I) Setting Deadlines for Submitting Proofs of Claims, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof* [Docket No. 218].

30. “*Binance.US Platform*” has the meaning ascribed to it in the Asset Purchase Agreement.
31. “*Binance US*” means BAM Trading Services Inc. (d/b/a Binance.US).
32. “*Binance US Account*” means a customer account opened with the Purchaser by an Account Holder or a Holder of an Allowed OpCo General Unsecured Claim.
33. “*Business Day*” means any day, other than a Saturday, Sunday, or a “legal holiday” (as defined in Bankruptcy Rule 9006(a)).
34. “*Cash*” or “\$” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.
35. “*Causes of Action*” mean any action, Claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, Lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise. For the avoidance of doubt, “*Causes of Action*” includes: (a) any right of setoff, counterclaim, or recoupment and any claim arising from any contract or for breach of duties imposed by law or in equity; (b) any claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, violation of local, state, federal, or foreign law, or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any right to object to or otherwise contest Claims or Interests; (d) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (e) any claim or defense, including fraud, mistake, duress, usury, and any other defenses set forth in section 558 of the Bankruptcy Code.
36. “*CCO*” means Evan Psaropoulos.
37. “*CEO*” means Stephen Ehrlich.
38. “*Certificate*” means any instrument evidencing a Claim or an Interest.
39. “*Chapter 11 Cases*” means (a) when used with reference to a particular Debtor, the case pending for that Debtor in the Bankruptcy Court under chapter 11 of the Bankruptcy Code and (b) when used with reference to all Debtors, the procedurally consolidated cases filed for the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.
40. “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.
41. “*Claims Objection Bar Date*” means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) (i) with respect to Administrative Claims (other than Professional Fee Claims and Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), sixty days after the Administrative Claims Bar Date or (ii) with respect to all other Claims (other than Professional Fee Claims), 180 days after the Effective Date and (b) such other period of limitation as may be specifically fixed by the Debtors or the Wind-Down Trust, as applicable, as approved by an order of the Bankruptcy Court for objecting to such Claims.





centralized authority, including stablecoins, digital coins and tokens, such as security tokens, utility tokens and governance tokens.

54. “Cure” or “Cure Claim” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s default under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

55. “Customer Onboarding Protocol” means the protocol describing the process of onboarding Account Holders and Holders of OpCo General Unsecured Claims onto the Binance.US Platform, the form of which shall be included in the Plan Supplement and filed no later than by February 8, 2023, and which shall be in a form acceptable to the Purchaser.

56. “D&O Carriers” means the insurance carriers of the D&O Liability Insurance Policies.

57. “D&O Liability Insurance Policies” means all unexpired insurance policies maintained by the Debtors, the Wind-Down Debtors, or the Estates as of the Effective Date that have been issued (or provide coverage) regarding directors’, managers’, officers’, members’, and trustees’ liability (including any “tail policy”), including but not limited to the Management Liability Policy, the Excess Policies, and the Side-A Policy, and all agreements, documents, or instruments relating thereto.

58. “D&O Settlement” means the settlement between the Debtors and CEO and CCO as set forth in Article IV.G of the Plan.

59. “Debtors” means, collectively, each of the following: Voyager Digital Holdings, Inc.; Voyager Digital Ltd.; and Voyager Digital, LLC.

60. “Definitive Documents” means: (a) the Plan (and any and all exhibits, annexes, and schedules thereto); (b) the Confirmation Order; (c) the Disclosure Statement and the other Solicitation Materials; (d) the Disclosure Statement Order; (e) all pleadings filed by the Debtors in connection with the Chapter 11 Cases (or related orders); (f) the Plan Supplement; (g) the Management Transition Plan; (h) any new material employment, consulting, or similar agreements entered into between the Wind-Down Trust and any of the Debtors’ employees, if any; (i) the Asset Purchase Agreement; (j) the Customer Onboarding Protocol; and (k) any and all other deeds, agreements, filings, notifications, pleadings, orders, certificates, letters, instruments or other documents reasonably desired or necessary to consummate and document the transactions contemplated by the Restructuring Transactions (including any exhibits, amendments, modifications, or supplements made from time to time thereto).

61. “Disclosure Statement” means the *Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, as may be amended, supplemented, or otherwise modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan.

62. “Disclosure Statement Order” means the order entered by the Bankruptcy Court approving the Disclosure Statement.

63. “Disputed” means a Claim or an Interest or any portion thereof: (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order; and (c) with respect to which a party in interest has Filed a Proof of Claim, a Proof of Interest, or otherwise made a written request to a Debtor for payment.



64. “*Disputed Claims Reserve*” means an appropriate reserve in an amount to be determined by the Wind-Down Trust for distributions on account of Disputed Claims that are subsequently Allowed after the Effective Date, in accordance with Article VII.D hereof.

65. “*Distributable Cryptocurrency*” means all Cryptocurrency held on the Voyager platform or that is otherwise property of any Debtor on the Effective Date after payment in full of, or reserve for, all Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims.

66. “*Distributable HoldCo Cash*” means HoldCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at HoldCo in full; and (y) to fund HoldCo’s Pro Rata share of the Wind-Down Reserve.

67. “*Distributable OpCo Cash*” means OpCo’s Cash, including the Purchase Price Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at OpCo in full; and (y) to fund OpCo’s Pro Rata share of the Wind-Down Reserve.

68. “*Distributable TopCo Cash*” means TopCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at TopCo in full; and (y) to fund TopCo’s Pro Rata share of the Wind-Down Reserve.

69. “*Distribution Agent*” means, as applicable, the Purchaser, Wind-Down Debtors, Wind-Down Trust or any Entity or Entities designated by the Purchaser, Wind-Down Debtors, or the Wind-Down Trust (as applicable) to make or to facilitate distributions that are to be made pursuant to the Plan, Definitive Documents, and Asset Purchase Agreement.

70. “*Distribution Date*” means, except as otherwise set forth herein, the date or dates determined by the Wind-Down Trust, on or after the Effective Date, upon which the Distribution Agent shall make distributions to Holders of Allowed Claims entitled to receive distributions under the Plan.

71. “*Distribution Record Date*” means the record date for purposes of determining which Holders of Allowed Claims and Interests against the Debtors are eligible to receive distributions under the Plan, which date shall be the Effective Date, or such other date as is determined by the Debtors or designated by an order of the Bankruptcy Court.

72. “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which (a) all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan, (b) no stay of the Confirmation Order is in effect, and (c) the Debtors declare the Plan effective.

73. “*Employee Transition Plan*” has the meaning set forth in Article IV.E of the Plan, and which shall be in form and substance reasonably acceptable to the Committee.

74. “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

75. “*Estate*” means, as to each Debtor, the estate created on the Petition Date for the Debtor in its Chapter 11 Case pursuant to sections 301 and 541 of the Bankruptcy Code and all property (as defined in section 541 of the Bankruptcy Code) acquired by the Debtor after the Petition Date through and including the Effective Date.

76. “*Excess Policies*” means, collectively, the Excess Insurance Policy, No. EFI1203041-01, issued by Euclid Financial on behalf of Certain Underwriters of Lloyd’s, London, the Excess Insurance

Policy, No. RILED0A3392022, issued by Relm Insurance Ltd., both for the February 22, 2022 to February 22, 2023 period, and the Excess Policy, No. ELU184180-23, issued by XL Specialty Insurance Company, for the February 22, 2022 to July 1, 2023 period.

77. “*Exculpated Parties*” means, collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) the Committee, and each of the members thereof, solely in their capacity as such; (c) each of the Released Professionals; (d) each of the Released Voyager Employees; and (e) the Distribution Agent.

78. “*Executory Contract*” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

79. “*Existing Equity Interests*” means any Interest in TopCo existing immediately prior to the occurrence of the Effective Date.

80. “*Extended Outside Date*” has the meaning set forth in the Asset Purchase Agreement.

81. “*Federal Judgment Rate*” means the federal judgment interest rate in effect as of the Petition Date calculated as set forth in section 1961 of the Judicial Code.

82. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing, respectively, in the Chapter 11 Cases with the Bankruptcy Court or its authorized designee, or, with respect to the filing of a Proof of Claim or Proof of Interest, file, filed, or filing, respectively, with the Claims, Noticing, and Solicitation Agent.

83. “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

84. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, petition for certiorari, or move for a new trial, reargument, reconsideration, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, reargument, reconsideration, or rehearing has been timely taken or filed, or as to which any appeal that has been or may be taken or any petition for certiorari or any motion for a new trial, reargument, reconsideration, or rehearing that has been or may be made or filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the motion for a new trial, reargument, reconsideration, or rehearing shall have been denied, resulted in no modification of such order (if any such motion has been or may be granted), or have otherwise been dismissed with prejudice; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure or any comparable Bankruptcy Rule may be filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

85. “*FTX*” means FTX Trading, Ltd. and any of its Affiliates or subsidiaries, including West Realm Shires Inc (d/b/a “FTX.US”).

86. “*FTX Bankruptcy Proceeding*” means that certain chapter 11 proceeding captioned *In re FTX Trading Ltd.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Nov. 11, 2022).

87. “*FTX Claims*” means the claims or causes of action asserted or assertable by the Debtors against FTX, whether in the FTX Bankruptcy Proceeding or otherwise.



100. “*Interim Compensation Order*” means the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* [Docket No. 236].

101. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001 and the rules and regulations promulgated thereunder, as applicable to the Chapter 11 Cases.

102. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

103. “*Liquidation Procedures*” means, in the event the Sale Transaction is not consummated by the Outside Date, such procedures filed by the Wind-Down Entity identifying the mechanics and procedures to effectuate the Liquidation Transaction.

104. “*Liquidation Transaction*” means, in the event the Sale Transaction is not consummated by the Outside Date, the distribution of the Debtors’ Cryptocurrency, Cash and other assets pursuant to Article IV.D of this Plan.

105. “*Management Liability Policy*” means the Executive and Corporate Securities Liability Insurance Policy, No. ELU181214-22, issued by XL Specialty Insurance Company for the February 22, 2022 to February 22, 2023 period.

106. “*Management Transition Plan*” has the meaning set forth in Article IV.E of the Plan, and which shall be in form and substance reasonably acceptable to the Committee.

107. “*Net Owed Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

108. “*Non-Released D&O Claims*” has the meaning set forth in Article IV.F of the Plan.

109. “*Non-Released D&O Claim Budget*” means the amount allocated to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims, which amount shall be agreed upon between the Debtors and the Committee prior to the Confirmation Hearing.

110. “*Non-Released Insurance Claims*” has the meaning set forth in Article IV.F of the Plan.

111. “*OpCo*” means Voyager Digital, LLC.

112. “*OpCo General Unsecured Claim*” means any Claim against OpCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Account Holder Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation against OpCo are OpCo General Unsecured Claims.

113. “*OSC*” means the Ontario Securities Commission.

114. “*Other Priority Claim*” means any Claim against a Debtor, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

115. “*Outside Date*” has the meaning set forth in the Asset Purchase Agreement. All references herein to the “*Outside Date*” shall be deemed to include the “*Extended Outside Date*” to the extent the *Outside Date* is extended in accordance with Section 8.1(c) of the Asset Purchase Agreement.

116. “*Person*” has the meaning set forth in section 101(41) of the Bankruptcy Code.

117. “*Petition Date*” means July 5, 2022.

118. “*Plan*” means this joint chapter 11 plan and all exhibits, supplements, appendices, and schedules hereto, as may be altered, amended, supplemented, or otherwise modified from time to time in accordance with Article X.A hereof, including the Plan Supplement (as altered, amended, supplemented, or otherwise modified from time to time), which is incorporated herein by reference and made part of the Plan as if set forth herein.

119. “*Plan Supplement*” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may thereafter be amended, supplemented, or otherwise modified from time to time in accordance with the terms of the Plan, the Bankruptcy Code, the Bankruptcy Rules, and applicable law), to be Filed by the Debtors no later than seven days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court, and additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement. The Plan Supplement may include the following, as applicable: (a) the Schedule of Assumed Executory Contracts and Unexpired Leases; (b) the Schedule of Retained Causes of Action; (c) the Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases; (d) the Customer Onboarding Protocol; (e) the Restructuring Transactions Memorandum; (f) the Wind-Down Trust Agreement; and (g) any additional documents necessary to effectuate or that is contemplated by the Plan, including any compensation program for any of the Debtors’ employees to be established as contemplated in the Plan and the Definitive Documents to facilitate the transfer of Acquired Assets pursuant to the Asset Purchase Agreement and the wind-down of the Debtors’ Estates; *provided* that the Schedule of Retained Causes of Action shall be filed no later than 14 days before the Voting Deadline. The Plan Supplement (and the contents thereof) shall be (x) subject to Purchaser’s consent rights solely to the extent set forth under the Asset Purchase Agreement (and shall otherwise be consistent with the Asset Purchase Agreement) and (y) reasonably acceptable to the Committee.

120. “*Priority Tax Claim*” means any Claim of a Governmental Unit against a Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code.

121. “*Pro Rata*” means the proportion that (i) an Allowed Claim or an Allowed Interest in a particular Class bears to (ii) the aggregate amount of Allowed Claims or Allowed Interests in that Class and, solely with respect to Claims in Classes 3 and 4(a), the proportion that an Allowed Claim in either such Class bears to the aggregate amount of Allowed Claims in Classes 3 and 4(a) in the aggregate, unless otherwise indicated. For purposes of calculating Pro Rata distributions if the Sale Transaction is consummated by the Outside Date, the Pro Rata shares of all Holders of Allowed Claims or Allowed Interests shall be calculated taking into account the Acquired Coins Value of the Net Owed Coins distributed to each of the Account Holders.

122. “*Professional*” means an Entity: (a) employed in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code or (b) for which compensation and reimbursement has been Allowed by Final Order of the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.



123. “*Professional Fee Claim*” means any Administrative Claim by a Professional for compensation for services rendered or reimbursement of expenses incurred by such Professional through and including the Effective Date to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court. To the extent the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional’s requested fees and expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

124. “*Professional Fee Escrow Account*” means an escrow account funded by the Debtors with Cash no later than the Effective Date in an amount equal to the Professional Fee Escrow Amount.

125. “*Professional Fee Escrow Amount*” means the aggregate amount of quarterly U.S. Trustee fees, Professional Fee Claims, and other unpaid fees and expenses the Professionals have incurred or will incur in rendering services in connection with the Chapter 11 Cases prior to and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, which shall be estimated pursuant to the method set forth in Article II.B of the Plan.

126. “*Proof of Claim*” means a written proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

127. “*Proof of Interest*” means a written proof of Interest Filed against any of the Debtors in the Chapter 11 Cases.

128. “*Purchase Price Cash*” means the Cash paid by the Purchaser to OpCo pursuant to the Asset Purchase Agreement.

129. “*Purchaser*” means Binance US.

130. “*Reinstated*” or “*Reinstatement*” means, with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

131. “*Related Party*” means, with respect to any Entity, in each case in its capacity as such with respect to such Entity, such Entity’s current and former directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and advisors.

132. “*Released Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Wind-Down Debtors; (c) the Committee, and each of the members thereof; (d) each of the Released Professionals; (e) Purchaser and each of its Related Parties; and (f) each of the Released Voyager Employees (subject to the limitations contained in Article IV.F and Article IV.G of the Plan); *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Released Parties” under the Plan.

133. “*Released Professionals*” means the following professionals retained by the Debtors, the Committee, or the Purchaser (as applicable): (i) Kirkland & Ellis LLP; (ii) Moelis & Company LLC; (iii) Berkeley Research Group, LLC; (iv) Bankruptcy Management Solutions, Inc. d/b/a Stretto; (v) Quinn Emanuel Urquhart & Sullivan LLP; (vi) Fasken Martineau DuMoulin LLP; (vii) Campbells Legal (BVI); (viii) McDermott Will & Emery LLP; (ix) FTI Consulting, Inc.; (x) Epiq Corporate Restructuring,



LLC; (xi) Cassels, Brock & Blackwell LLP; (xii) Paul Hastings LLP; (xiii) Harney Westwood & Riegels LP (BVI); (xiv) Day Pitney LLP (solely in their capacity as counsel to the Debtors); (xv) Jenner & Block LLP; (xvi) Seyfarth Shaw LLP; (xvii) Alvarez & Marsal Canada Inc.; (xviii) Blake, Cassels & Graydon LLP; (xix) Jaffe Raitt Heuer & Weiss; (xx) Latham & Watkins LLP; (xxi) Lowenstein Sandler LLP; (xxii) Kramer Levin LLP; and (xxiii) Acura Law Firm; *provided* that if the Asset Purchase Agreement is terminated, Latham & Watkins LLP shall not be a “Released Professional” under the Plan.

134. “*Released Voyager Employees*” means all directors, officers, and Persons employed by each of the Debtors and their Affiliates serving in such capacity on or after the Petition Date but before the Effective Date (subject to the limitations contained in Article IV.F and Article IV.G of the Plan).

135. “*Releasing Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Wind-Down Debtors; (c) the Committee, and each of the members thereof; (d) each of the Released Professionals; (e) each of the Released Voyager Employees; (f) Purchaser and each of its Related Parties to the extent Purchaser is able to bind such Related Parties; (g) all Holders of Claims that vote to accept the Plan and affirmatively opt into the releases provided by the Plan; (h) all Holders of Claims that vote to reject the Plan and affirmatively opt into the releases provided by the Plan; and (i) all Holders of Claims or Interests that abstain from voting (or are otherwise not entitled to vote) on the Plan and affirmatively opt into the releases provided by the Plan; *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Releasing Parties” under the Plan.

136. “*Restructuring Transactions*” means those mergers, amalgamations, consolidations, reorganizations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions, or other corporate transactions that the Debtors and the Committee jointly determine to be necessary to implement the transactions described in this Plan, as described in more detail in Article IV.B herein and the Restructuring Transactions Memorandum.

137. “*Restructuring Transactions Memorandum*” means that certain memorandum as may be amended, supplemented, or otherwise modified from time to time, describing the steps to be carried out to effectuate the Restructuring Transactions, the form of which shall be included in the Plan Supplement, and which shall be in a form reasonably acceptable to the Committee.

138. “*Robertson Class Action*” means that certain putative class action litigation filed in the United States District Court for the Southern District of Florida, captioned *Robertson, et al. v. Cuban, et al.*, No. 1:22-cv-22538-RKA (S.D. Fla. Aug. 10, 2022).

139. “*Sale Transaction*” means the sale of certain of the Debtors’ assets and all other transactions pursuant to the Asset Purchase Agreement.

140. “*Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance acceptable to the Purchaser and in all respects consistent with the terms of the Asset Purchase Agreement, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors and assigned to the Purchaser pursuant to the Plan and Asset Purchase Agreement, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Trust, as applicable, in accordance with the Plan.

141. “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance reasonably acceptable to the Committee, of certain Executory Contracts and Unexpired Leases to be assumed by the

Debtors pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Trust, as applicable, in accordance with the Plan.

142. “*Schedule of Retained Causes of Action*” means the schedule of certain Causes of Action of the Debtors that are not released, waived, settled, compromised, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors and/or the Wind-Down Entity, which shall be included in the Plan Supplement. For the avoidance of doubt, any failure to specifically list any Causes of Action on the Schedule of Retained Causes of Action shall not be deemed a waiver or admission that any such Cause of Action does not constitute Vested Causes of Action.

143. “*Schedules*” means, collectively, the schedules of assets and liabilities, Schedule of Assumed Executory Contracts and Unexpired Leases, Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by each of the Debtors pursuant to section 521 of the Bankruptcy Code, as such schedules and statements may have been or may be amended, modified, or supplemented from time to time.

144. “*SEC*” means the United States Securities and Exchange Commission.

145. “*Section 510(b) Claim*” means any Claim against a Debtor subject to subordination under section 510(b) of the Bankruptcy Code.

146. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a secured Claim.

147. “*Secured Tax Claim*” means any Secured Claim against a Debtor that, absent its Secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

148. “*Securities Act*” means the U.S. Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

149. “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act.

150. “*Side-A Policy*” means the Cornerstone A-Side Management Liability Policy, ELU184179-22, issued by XL Specialty Insurance Company, for the July 1, 2022 to July 1, 2023 period.

151. “*Solicitation Materials*” means all solicitation materials with respect to the Plan.

152. “*Special Committee*” means the special committee established at OpCo, comprised of two independent directors, to conduct the Special Committee Investigation.

153. “*Special Committee Investigation*” means that certain investigation undertaken by the Special Committee into certain historical transactions, as more fully described in the Disclosure Statement.



166. “VGX” means Voyager Token, that certain Cryptocurrency issued by the Debtors.

167. “*Voting Deadline*” means February 22, 2023.

168. “*Voyager*” means Voyager Digital Ltd. and its direct and indirect Affiliates.

169. “*VWAP*” means, with respect to any type of Cryptocurrency and as of any date of determination, an amount equal to the volume weighted average price in U.S. dollars for such type of Cryptocurrency for the consecutive 24-hour period immediately prior to 8:00 a.m. New York Time on such date of determination, as reported on <https://coinmarketcap.com>.

170. “*Wind-Down Debtor*” means a Debtor, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date.

171. “*Wind-Down Entity*” means the Wind-Down Debtor or the Wind-Down Trust, as applicable, pursuant to the Restructuring Transactions Memorandum.

172. “*Wind-Down Entity Assets*” means the Wind-Down Trust Assets or any assets transferred to the Wind-Down Debtor, as applicable.

173. “*Wind-Down Reserve*” means an amount, which shall be agreed upon between the Debtors and the Committee prior to the Confirmation Hearing.

174. “*Wind-Down Trust*” means the trust established on the Effective Date and described in Article IV.H to be established under Delaware trust law that, among other things, shall effectuate the wind-down of the Wind-Down Debtors, commence, litigate and settle the Vested Causes of Action that are not released, waived, settled, compromised, or transferred under the Plan and make distributions pursuant to the terms of the Plan and the Wind-Down Trust Agreement; *provided* that, for the avoidance of doubt, the Wind-Down Trust shall not conduct any business operations or continue the Debtors’ business operations after the Effective Date.

175. “*Wind-Down Trust Agreement*” means that certain trust agreement by and among the Debtors, the Committee, and the Wind-Down Trust, which shall be included in the Plan Supplement in a form reasonably acceptable to the Committee.

176. “*Wind-Down Trust Assets*” means all of the Debtors’ assets transferred to, and vesting in, the Wind-Down Trust pursuant to the Wind-Down Trust Agreement, which, in the event the Sale Transaction is consummated, shall exclude the Acquired Assets, and which shall include, without limitation but only to the extent the following are not Acquired Assets, (a) the Wind-Down Reserve, (b) the Net-Owned Coins to be distributed to Account Holders in Unsupported Jurisdictions to the extent the Purchaser has not obtained the applicable Unsupported Jurisdiction Approval in accordance with Section 6.12 of the Asset Purchase Agreement, (c) any distributions to Account Holders or Holders of OpCo General Unsecured Claims that are returned to the Wind-Down Entity pursuant to Section 6.12(e) of the Asset Purchase Agreement, (d) 3AC Claims and 3AC Recovery, (e) FTX Claims and FTX Recovery, (f) Alameda Claims and Alameda Recovery, (g) the Non-Released D&O Claims, and (h) the Vested Causes of Action.

177. “*Wind-Down Trust Beneficiaries*” means the Holders of Allowed Claims or Allowed Interests that are entitled to receive distributions pursuant to the terms of the Plan, whether or not such Claims or Interests are Allowed as of the Effective Date.

178. “*Wind-Down Trust Expenses*” means all actual and necessary costs and expenses incurred by the Wind-Down Trustee in connection with carrying out the obligations of the Wind-Down Trust pursuant to the terms of the Plan and the Wind-Down Trust Agreement.

179. “*Wind-Down Trust Oversight Committee*” means the oversight committee tasked with overseeing the Wind-Down Trust in accordance with the Plan and the Wind-Down Trust Agreement.

180. “*Wind-Down Trust Units*” means the beneficial interests in the Wind-Down Trust as more fully set forth in the Wind-Down Trust Agreement.

181. “*Wind-Down Trustee*” means the Person or Persons selected by the Committee, after consultation with the Debtors, subject to the approval of the Bankruptcy Court and identified in the Plan Supplement, to serve as the trustee(s) of the Wind-Down Trust, and any successor thereto, appointed pursuant to the Wind-Down Trust Agreement.

## **B. Rules of Interpretation**

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; (2) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form; (3) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (4) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed, shall mean that document, schedule, or exhibit, as it may thereafter have been or may thereafter be validly amended, amended and restated, supplemented, or otherwise modified; (5) unless otherwise specified, any reference to an Entity as a Holder of a Claim or Interest, includes that Entity’s successors and assigns; (6) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (7) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (8) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (12) references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (13) unless otherwise specified, all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases; (14) any effectuating provisions may be interpreted by the Debtors or the Wind-Down Trust in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; (15) any references herein to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter; (16) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; (17) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or



“managers,” as applicable, as such terms are defined under the applicable state limited liability company laws; and (18) the use of “include” or “including” is without limitation unless otherwise stated.

**C. Computation of Time**

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

**D. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan and any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, documents, instruments, or contracts, in which case the governing law of such agreement shall control); *provided* that corporate, limited liability company, or partnership governance matters relating to the Debtors or the Wind-Down Debtors, as applicable, shall be governed by the laws of the jurisdiction of incorporation or formation of the relevant Debtor or Wind-Down Debtor, as applicable.

**E. Reference to Monetary Figures**

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

**F. Reference to the Debtors or the Wind-Down Debtors**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Wind-Down Debtors mean the Debtors and the Wind-Down Debtors, as applicable, to the extent the context requires.

**G. Nonconsolidated Plan**

Although for purposes of administrative convenience and efficiency the Plan has been filed as a joint plan for each of the Debtors and presents together Classes of Claims against and Interests in the Debtors, the Plan does not provide for the substantive consolidation of any of the Debtors.

**ARTICLE II.**

**ADMINISTRATIVE AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

**A. Administrative Claims**

Except as otherwise provided in this Article II.A and except with respect to Administrative Claims that are Professional Fee Claims or subject to 11 U.S.C. § 503(b)(1)(D), unless previously Filed,



requests for payment of Allowed Administrative Claims (other than Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code) must be Filed and served on the Wind-Down Entity pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such Administrative Claims shall be deemed satisfied as of the Effective Date without the need for any objection from the Wind-Down Entity or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity. Objections to such requests, if any, must be Filed and served on the Wind-Down Entity and the requesting party by the Claims Objection Bar Date for Administrative Claims. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order of the Bankruptcy Court.

Except with respect to Administrative Claims that are Professional Fee Claims, and except to the extent that an Administrative Claim or Priority Tax Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Claim and the applicable Debtor(s) agree to less favorable treatment, each Holder of an Allowed Administrative Claim shall receive an amount of Cash equal to the amount of the unpaid or unsatisfied portion of such Allowed Administrative Claim in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Effective Date, no later than thirty (30) days after the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Wind-Down Entity, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court. Any Cryptocurrency inadvertently deposited to the Debtors' account(s) after the Petition Date shall be returned to the sender in full.

Objections to requests for payment of such Administrative Claims, if any, must be Filed with the Bankruptcy Court and served on the Wind-Down Entity and the requesting Holder no later than the Claims Objection Bar Date for Administrative Claims. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, an order that becomes a Final Order of the Bankruptcy Court.

## **B. Professional Fee Claims**

### **1. Final Fee Applications and Payment of Professional Fee Claims**

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules. The Wind-Down Entity shall pay Professional Fee Claims in Cash to such Professionals in the amount the Bankruptcy Court allows, including from funds held in the

Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court; *provided* that the Debtors' and the Wind-Down Entity's obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account.

2. Professional Fee Escrow Account

No later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and the U.S. Trustee and for no other Entities until all quarterly U.S. Trustee fees and all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the U.S. Trustee or to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. No funds held in the Professional Fee Escrow Account shall be property of the Estates of the Debtors or the Wind-Down Entity. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, and all U.S. Trustee quarterly fees plus statutory interest, if any, have been paid in full, any remaining funds held in the Professional Fee Escrow Account shall be turned over to the Wind-Down Entity without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

3. Professional Fee Escrow Amount

The Professionals shall deliver to the Debtors a reasonable and good-faith estimate of their unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, and shall deliver such estimate no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Fee Claims Filed with the Bankruptcy Court, and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated to be outstanding as of the anticipated Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account; *provided* that the Wind-Down Entity shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

4. Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors and/or the Wind-Down Entity, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Wind-Down Entity. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Entity may employ and pay any Professional in the ordinary course of business for the

period after the Confirmation Date without any further notice to or action, order, or approval of the Bankruptcy Court.

For the avoidance of doubt, no Administrative Claims, Professional Fee Claims, or any other post-confirmation fees and expenses shall be paid prior to payment of any quarterly fees due and outstanding to the U.S. Trustee.

### **C. Priority Tax Claims**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release, and in exchange for, each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

## **ARTICLE III.**

### **CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS**

#### **A. Classification of Claims and Interests**

Except for the Claims addressed in Article II of the Plan, all Claims against and Interests in the Debtors are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions pursuant to the Plan and in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

#### **B. Summary of Classification**

A summary of the classification of Claims against and Interests in each Debtor pursuant to the Plan is set forth in the following chart. The Plan constitutes a separate chapter 11 plan for each of the Debtors, and accordingly, the classification of Claims and Interests set forth below applies separately to each of the Debtors. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes, and such Claims or Interests shall be treated as set forth in Article III.E hereof. Voting tabulations for recording acceptances or rejections of the Plan will be conducted on a Debtor-by-Debtor basis as set forth above.<sup>1</sup>

<b>Classes</b>	<b>Claim or Interest</b>	<b>Status</b>	<b>Voting Rights</b>
1	Secured Tax Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)

<sup>1</sup> The Debtors reserve the right to separately classify Claims or Interests to the extent necessary to comply with any requirements under the Bankruptcy Code or applicable law.

Classes	Claim or Interest	Status	Voting Rights
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3	Account Holder Claims	Impaired	Entitled to Vote
4A	OpCo General Unsecured Claims	Impaired	Entitled to Vote
4B	HoldCo General Unsecured Claims	Impaired	Entitled to Vote
4C	TopCo General Unsecured Claims	Impaired	Entitled to Vote
5	Alameda Loan Facility Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
6	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
8	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
9	Existing Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

### C. Treatment of Classes of Claims and Interests

Subject to Article VI hereof, each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in exchange for such Holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors or Wind-Down Entity, as applicable, and the Holder of such Allowed Claim or Allowed Interest, as applicable. In no event shall any Holder of a Claim receive more than such Holder's Allowed amount on account of such Claim.

#### 1. Class 1 —Secured Tax Claims

- (a) *Classification:* Class 1 consists of all Secured Tax Claims.
- (b) *Treatment:* Each Holder of an Allowed Secured Tax Claim shall receive, in full and final satisfaction of such Allowed Secured Tax Claim, at the option of the Wind-Down Entity, payment in full in Cash of such Holder's Allowed Secured Tax Claim or such other treatment rendering such Holder's Allowed Secured Tax Claim Unimpaired.
- (c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Allowed Secured Tax Claims are conclusively presumed to have accepted the Plan under

section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Secured Tax Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 — Other Priority Claims

- (a) *Classification:* Class 2 consists of all Other Priority Claims.
- (b) *Treatment:* Each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction of such Allowed Other Priority Claim, at the option of the applicable Debtor, payment in full in Cash of such Holder's Allowed Other Priority Claim or such other treatment rendering such Holder's Allowed Other Priority Claim Unimpaired.
- (c) *Voting:* Class 2 is Unimpaired under the Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 — Account Holder Claims

- (a) *Classification:* Class 3 consists of all Account Holder Claims.
- (b) *Allowance:* Account Holder Claims shall be conclusively Allowed in the amount listed on OpCos's *Amended Schedules of Assets and Liabilities* (Case No. 22-10945) [Docket No. 18]; *provided* that the rights of any Holder of an Account Holder Claim to object to the scheduled amount shall be preserved. To the extent an Account Holder Claim is Allowed in a greater amount than the scheduled amount of such Account Holder Claim, such Holder shall be entitled to a subsequent distribution such that it will receive its Pro Rata share of recoveries to Holders of Allowed Account Holder Claims. Account Holder Claims shall be valued in U.S. dollars as of the Petition Date consistent with section 502(b) of the Bankruptcy Code.
- (c) *Treatment:* Each Holder of an Allowed Account Holder Claim will receive in exchange for such Allowed Account Holder Claim:
  - (i) If the Sale Transaction is consummated by the Outside Date:
    - A. its Net Owed Coins, as provided in and subject to the requirements of Sections 6.10 and 6.12 of the Asset Purchase Agreement; *provided* that for Account Holders in Unsupported Jurisdictions and only to the extent that the Purchaser does not obtain the Unsupported Jurisdiction Approval for the jurisdiction in which such Account Holder resides within 6 months following the Closing Date (as defined in the Asset Purchase Agreement), such Account Holders shall receive, after expiration of such time period, value in Cash at which such Net Owed Coins allocable to such Account Holder are liquidated;

- B. its Pro Rata share of any Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;
- C. its Pro Rata share of Distributable OpCo Cash; and
- D. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims;

*provided* that distributions made to any Account Holder pursuant to clauses (B), (C), and (D) above shall be made after taking into account the Acquired Coins Value of the Net Owed Coins or the value in Cash at which such Net Owed Coins are liquidated, as applicable, previously allocated to such Account Holder; or

(ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:

- A. its Pro Rata share of Distributable OpCo Cash;
- B. its Pro Rata share of Distributable Cryptocurrency, which such Account Holder shall be able to withdraw in kind, alternative Cryptocurrency, and/or Cash for a period of thirty (30) days after the Effective Date through the Voyager platform or, if elected by Seller pursuant to Section 6.12(d) of the Asset Purchase Agreement, through the Binance.US Platform; *provided* that if the applicable transfer is made through the Voyager platform and such Account Holder does not withdraw its Pro Rata share of Distributable Cryptocurrency available to such Account Holder from the Voyager platform within such thirty (30) day period, such Account Holder will receive Cash in the equivalent value to its Pro Rata share of Distributable Cryptocurrency; and
- C. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to OpCo; *provided* that any distributions on account of Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims,



Allowed Secured Tax Claims, and Allowed Other Priority Claims.

- (d) *Voting:* Class 3 is Impaired under the Plan. Holders of Allowed Account Holder Claims are entitled to vote to accept or reject the Plan.

4. Class 4A — OpCo General Unsecured Claims

- (a) *Classification:* Class 4A consists of all OpCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed OpCo General Unsecured Claim will receive in exchange for such Allowed OpCo General Unsecured Claim:

- (i) If the Sale Transaction is consummated by the Outside Date:

- A. its Pro Rata share of Distributable Cryptocurrency in Cash;
- B. its Pro Rata share of Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;
- C. its Pro Rata share of Distributable OpCo Cash; and
- D. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims; or

- (ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:

- A. its Pro Rata share of Distributable Cryptocurrency in Cash;
- A. its Pro Rata share of Distributable OpCo Cash; and
- B. to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to OpCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.

- (c) *Voting:* Class 4A is Impaired under the Plan. Holders of Allowed OpCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

5. Class 4B — HoldCo General Unsecured Claims

- (a) *Classification:* Class 4B consists of all HoldCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed HoldCo General Unsecured Claim will receive in exchange for such Allowed HoldCo General Unsecured Claim:
  - (i) its Pro Rata share of Distributable HoldCo Cash; and
  - (ii) to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to HoldCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.
- (c) *Voting:* Class 4B is Impaired under the Plan. Holders of Allowed HoldCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

6. Class 4C — TopCo General Unsecured Claims

- (a) *Classification:* Class 4C consists of all TopCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed TopCo General Unsecured Claim will receive in exchange for such Allowed TopCo General Unsecured Claim:
  - (i) its Pro Rata share of Distributable TopCo Cash; and
  - (ii) to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of the Wind-Down Trust Assets attributable to TopCo; *provided* that any distributions on account of the Wind-Down Entity Assets or the Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims.
- (c) *Voting:* Class 4C is Impaired under the Plan. Holders of Allowed TopCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 5 — Alameda Loan Facility Claims

- (a) *Classification:* Class 5 consists of all Alameda Loan Facility Claims.
- (b) *Treatment:* Each Holder of an Allowed Alameda Loan Facility Claim will receive in exchange for such Allowed Alameda Loan Facility Claim to effectuate distributions from the Wind-Down Entity, its Pro Rata share of the Wind-Down

Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets; *provided* that any distributions on account of Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, all Allowed Claims at OpCo, HoldCo, and TopCo, including, but not limited to, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, Allowed Account Holder Claims, Allowed OpCo General Unsecured Claims, Allowed HoldCo General Unsecured Claims, and Allowed TopCo General Unsecured Claims; *provided, however, if the Bankruptcy Court denies subordination of the Alameda Loan Facility Claims, then such Alameda Loan Facility Claims shall be pari passu with General Unsecured Claims at the applicable Debtor entity.*

- (c) *Voting:* Class 5 is Impaired under the Plan. Holders of Allowed Alameda Loan Facility Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Allowed Alameda Loan Facility Claims are not entitled to vote to accept or reject the Plan.

8. Class 6 — Section 510(b) Claims

- (a) *Classification:* Class 6 consists of all Section 510(b) Claims against TopCo.
- (b) *Allowance:* Notwithstanding anything to the contrary herein, a Section 510(b) Claim against TopCo, if any such Section 510(b) Claim exists, may only become Allowed by Final Order of the Bankruptcy Court.
- (c) *Treatment:* Each Holder of Allowed Section 510(b) Claims against TopCo will receive, to effectuate distributions, if applicable, from the Wind-Down Entity, its Pro Rata share of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets (if applicable) attributable to TopCo; *provided* that any distributions on account of the Wind-Down Entity Assets or Wind-Down Trust Units (if applicable) shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims.
- (d) *Voting:* Class 6 is Impaired under the Plan. Holders (if any) of Allowed Section 510(b) Claims against TopCo are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders (if any) of Allowed Section 510(b) Claims against TopCo are not entitled to vote to accept or reject the Plan.

9. Class 7 — Intercompany Claims

- (a) *Classification:* Class 7 consists of all Intercompany Claims.
- (b) *Treatment:* On the Effective Date, all Intercompany Claims shall be, at the option of the Debtors, either (a) Reinstated or (b) converted to equity, otherwise set off, settled, distributed, contributed, or cancelled, in each case in accordance with the Restructuring Transactions Memorandum.

- (c) *Voting:* Holders of Intercompany Claims are either Unimpaired or Impaired, and such Holders of Intercompany Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

10. Class 8 — Intercompany Interests

- (a) *Classification:* Class 8 consists of all Intercompany Interests.
- (b) *Treatment:* On the Effective Date, all Intercompany Interests shall be, at the option of the Debtors, either (a) Reinstated in accordance with Article III.G of the Plan or (b) set off, settled, addressed, distributed, contributed, merged, or cancelled, in each case in accordance with the Restructuring Transactions Memorandum.
- (c) *Voting:* Holders of Intercompany Interests are either Unimpaired or Impaired, and such Holders of Intercompany Interests are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

11. Class 9 — Existing Equity Interests

- (a) *Classification:* Class 9 consists of all Existing Equity Interests.
- (b) *Treatment:* Each Holder of Existing Equity Interests will receive, to effectuate distributions, if applicable, from the Wind-Down Entity, its Pro Rata share of the Wind-Down Trust Units (if applicable) on account of any recovery of Wind-Down Trust Assets attributable to TopCo; *provided* that any distributions on account of Wind-Down Trust Units shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims.
- (c) *Voting:* Class 9 is Impaired under the Plan. Holders of Existing Equity Interests are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan.

**D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Wind-Down Entity's rights in respect of any Unimpaired Claim, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

**E. Elimination of Vacant Classes; Presumed Acceptance by Non-Voting Classes**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from

the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**F. Subordinated Claims**

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims against and Allowed Interests in the Debtors and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Wind-Down Entity reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**G. Intercompany Interests**

To the extent Reinstated under the Plan, distributions (if any) on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience and due to the importance of maintaining the corporate structure given the existing intercompany systems connecting the Debtors and their Affiliates, and in exchange for the Debtors' and Wind-Down Entity's agreement under the Plan to make certain distributions to the Holders of Allowed Claims.

**H. Controversy Concerning Impairment**

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code is satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims or Interests. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

**ARTICLE IV.**

**PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

**A. General Settlement of Claims and Interests**

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved

On or before the Effective Date, the applicable Debtors will take any action as may be necessary or advisable to effectuate the Restructuring Transactions described in the Plan, the Restructuring Transactions Memorandum, and the Customer Onboarding Protocol, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (4) the transfer or distribution of any Cryptocurrency or Cash pursuant to the Asset Purchase Agreement, or the Liquidation Procedures, as applicable; (5) the execution and delivery of the Wind-Down Trust Agreement; (6) any transactions necessary or appropriate to form the Wind-Down Entity; (7) such other transactions that are required to effectuate the Restructuring Transactions, including any sales, mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (8) all transactions necessary to provide for the purchase of the Acquired Assets by Purchaser under the Asset Purchase Agreement; and (9) all other actions that the applicable Entities determine to be necessary or appropriate, or that are reasonably requested by the Purchaser in accordance with the Asset Purchase Agreement, including making filings or recordings that may be required by applicable law.

### C. The Sale Transaction

On or prior to the Effective Date, the Debtors shall have consummated the Sale Transaction, and, among other things, the Acquired Assets and Assumed Liabilities shall have transferred to the Purchaser free and clear of all Liens, Claims, Interests, charges, or other encumbrances, and the Purchaser shall pay to the Debtors or Holders of Account Holder Claims and Holders of OpCo General Unsecured Claims, as applicable, the proceeds from the Sale Transaction, as and to the extent provided for in the Asset Purchase Agreement, and this Plan. The Confirmation Order shall authorize the Debtors, the Purchaser, and the Wind-Down Entity, as applicable, to undertake the transactions contemplated by the Asset Purchase Agreement, including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code.



The Debtors and Purchaser shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Sale Transaction pursuant to the terms of the Asset Purchase Agreement the Customer Onboarding Protocol, and this Plan. The Debtors shall be authorized to sell any Cryptocurrency to satisfy all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims. On and after the Effective Date, except as otherwise provided in the Plan and the Wind-Down Trust Agreement, the Wind-Down Debtors, the Wind-Down Entity, or the Purchaser, as applicable, may operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

Notwithstanding anything contained in this Plan and any Definitive Documents, if the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated, all provisions contained in this Plan and the Definitive Documents governing the Sale Transaction shall have no further force and effect, and the provisions governing the Liquidation Transaction shall govern. The rights and remedies of the Seller and Purchaser under the Asset Purchase Agreement and any related orders of the Bankruptcy Court shall be expressly preserved.

#### **D. The Liquidation Transaction**

If the Sale Transaction is not consummated by the Outside Date, pursuant to the Asset Purchase Agreement, then the following terms shall govern:

##### *1. The Liquidation Transaction*

On or after the Outside Date, the Debtors will pursue the Liquidation Transaction in accordance with the Liquidation Procedures. Pursuant to the Liquidation Transaction, the Debtors, the Wind-Down Entity, or the Wind Down Trustee, as applicable, will distribute certain of the Cryptocurrency in-kind to Holders of Account Holder Claims in accordance with Article III.C of the Plan, transfer all Wind-Down Entity Assets or Wind-Down Trust Assets to the Wind-Down Reserve, liquidate certain of the Cryptocurrency, distribute Cash to Holders of Claims, wind down and dissolve the Debtors, and pursue final administration of the Debtors' Estates pursuant to the Bankruptcy Code.

The Debtors, or the Wind-Down Entity, as applicable, shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Liquidation Transaction pursuant to this Plan. On or before the date that is twenty-one days prior to the anticipated commencement of the Liquidation Transaction, the Debtors, or the Wind-Down Entity, as applicable, shall file the Liquidation Procedures with the Bankruptcy Court. Parties in interest shall have ten days to object to the Liquidation Procedures, and if no objections are timely filed, the Liquidation Procedures shall be approved. In the event of a timely objection, the Bankruptcy Court shall adjudicate any objection to the Liquidation Procedures.

On and after the Effective Date, except as otherwise provided in the Plan, the Wind-Down Trust Agreement, and the Liquidation Procedures, the Wind-Down Debtors or the Wind-Down Entity as applicable, may operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

## 2. *Cryptocurrency Rebalancing*

Prior to the Effective Date the Debtors shall, in consultation with the Committee, be authorized to rebalance their Cryptocurrency portfolio to ensure that the Debtors can effectuate *pro rata* in-kind distributions of the Distributable Cryptocurrency according to Article III.C.3(c) of this Plan, *provided* that such rebalancing shall be in accordance with the Asset Purchase Agreement (if the Asset Purchase Agreement has not been terminated). The Debtors may effectuate such rebalancing by (i) selling such Cryptocurrency that cannot be distributed to Account Holders, (ii) purchasing Cryptocurrency supported by Voyager's or Purchaser's platform (as provided by the Asset Purchase Agreement) that shall be distributed to Account Holders, and (iii) engaging in any other transaction, including the execution of trades of Cryptocurrency, necessary or appropriate to effectuate distributions of the Distributable Cryptocurrency to Holders of Allowed Account Holder Claims.

## **E. Management and Employee Transition Plans**

The Debtors shall be authorized to implement the Management Transition Plan and Employee Transition Plan, the terms of which shall be reasonably acceptable to Purchaser and the Committee and included in the Plan Supplement. The Management Transition Plan and Employee Transition Plan shall help ensure that employees are available to provide transition services to the Debtors and/or the Wind-Down Entity to effectuate the Sale Transaction and to wind down the Debtors' Estates.

## **F. Non-Released D&O Claims**

Any Claims or Causes of Action held by the Debtors or their respective estates against the Debtors' CEO and/or CCO (regardless of any fiduciary capacity in which such individuals were acting) that are expressly related to approval of the 3AC Loan are not released pursuant to the Plan (collectively, the "Non-Released D&O Claims"), and shall be assigned and transferred to the Wind-Down Entity to be pursued, settled, or resolved by the Wind-Down Entity in accordance with the terms of Article IV.G of this Plan and subject to the Wind-Down Reserve. Any claims against the D&O Carriers that the Debtors' insurance transactions within the 90 days prior to the Petition Date are avoidable under the Bankruptcy Code, applicable state law, or both (the "Non-Released Insurance Claims") shall be assigned and transferred to the Wind-Down Entity to be pursued, settled, or resolved solely by the Wind-Down Entity in accordance with the terms of Article IV.G of this Plan. The Wind-Down Entity shall be a successor to the Debtors' rights, title, and interest in any Non-Released D&O Claims and Non-Released Insurance Claims, and the Wind-Down Entity shall have standing to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims in accordance with the terms of Article IV.G of this Plan; *provided* that: (i) any recovery by the Wind-Down Entity (and the beneficiaries thereof) on account of any Non-Released D&O Claim, including in each case by way of settlement or judgment, shall be satisfied solely by and to the extent of the proceeds of the Debtors' available D&O Liability Insurance Policies (and/or from the D&O Carriers directly) after payment from such D&O Liability Insurance Policies of any and all covered costs and expenses incurred in connection with the defense of the Non-Released D&O Claims; (ii) any party, including any trustee or any beneficiary of the Wind-Down Entity, seeking to execute, garnish, or otherwise attempt to collect on any settlement of or judgment in the Non-Released D&O Claims shall do so solely upon available insurance coverage from the Debtors' available D&O Liability Insurance Policies; and (iii) no party shall (a) record any judgment against the CEO or CCO, or (b) otherwise attempt to collect, directly or indirectly, from the personal assets of the CEO or CCO with respect to the Non-Released D&O Claims. For the avoidance of doubt, this provision does not enjoin, limit, or impair direct claims held by third parties against the Debtors' CEO or CCO (if any) other than any direct claims held by Holders of Claims or Interests that opt into the third party release in Article VIII.B of this Plan. Only upon the occurrence of the earlier of (x) a release being given as part of any later settlement of the Non-Released D&O Claims; (y) final resolution of any coverage claims asserted

On the Effective Date, the terms of the D&O Settlement shall be effectuated as provided in this Article IV.G.

CEO and CCO, each as insureds, under the D&O Liability Insurance Policies agree: (i) not to draw down on the Side-A Policy; *provided, however*, that should coverage continue to be available under the Side-A Policy following resolution of the Debtors' and/or the Wind-Down Entity's claims for the avoidance of the premium paid for the policy (whether by judgment or settlement or otherwise) such officer shall be entitled to seek coverage under the Side-A Policy to the extent any such coverage remains; and (ii) not to object to any settlement by the Debtors or Wind Down Entity of avoidance claims under the Side-A Policy, even if such settlement results in termination of benefits under the Side-A Policy. For the avoidance of doubt, this agreement is not intended to and shall not alter or amend each of the insureds' duties under the D&O Liability Insurance Policies. In the event that any insurer under the D&O Liability Insurance Policies denies coverage for any reason, the Wind-Down Entity shall have the right to bring a coverage claim against the insurer(s) in the name of the insured, the insureds shall reasonably cooperate with respect to any such claim, and the insured may participate at their election (and at their sole cost). For the avoidance of doubt, nothing contained in this Plan is intended as a waiver or release of the Debtors' and/or Wind-Down Entity's right to assert any Non-Released D&O Claim, but rather limits such recovery in the manner set forth above.

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Entry of the Confirmation Order shall be deemed approval of the D&O Settlement and, to the extent not already approved by the Bankruptcy Court, the Debtors or the Wind-Down Debtors, as applicable, are authorized to negotiate, execute, and deliver those documents necessary or appropriate to effectuate the D&O Settlement, without further notice or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors, the Wind-Down Debtors, the Committee, and the Special Committee may deem to be necessary to effectuate the D&O Settlement.

On the Effective Date, the Wind-Down Trust shall be formed for the benefit of the Wind-Down Trust Beneficiaries and each of the Debtors shall transfer the Wind-Down Trust Assets for distribution in accordance with the terms of the Plan. The Confirmation Order shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan.





2. Wind-Down Entity Assets

Notwithstanding any prohibition on assignability under applicable non-bankruptcy law, on the Effective Date and thereafter if additional Wind-Down Entity Assets become available, the Debtors shall be deemed, subject to the Wind-Down Trust Agreement, to have automatically transferred to the applicable Wind-Down Entity all of their right, title, and interest in and to all of the Wind-Down Trust Assets, in accordance with section 1141 of the Bankruptcy Code. All such assets shall automatically vest in the Wind-Down Entity free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims and Interests as set forth herein and the expenses of the Wind-Down Trust as set forth herein and in the Wind-Down Trust Agreement. Thereupon, the Debtors shall have no interest in or with respect to the Wind-Down Entity Assets or the Wind-Down Trust.

3. Treatment of Wind-Down Trust for Federal Income Tax Purposes; No Successor-in-Interest

The Wind-Down Trust shall be established for the primary purpose of liquidating and distributing the Wind-Down Trust Assets transferred to it, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Wind-Down Trust. Accordingly, the Wind-Down Trustee may, in an expeditious but orderly manner, liquidate the Wind-Down Trust Assets, make timely distributions to the Wind-Down Trust Beneficiaries and not unduly prolong its duration. The Wind-Down Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Wind-Down Trust Agreement. The record holders of beneficial interests shall be recorded and set forth in a register maintained by the Wind-Down Trustee expressly for such purpose.

The Wind-Down Trust is intended to qualify as a “grantor trust” for federal income tax purposes to the extent reasonably practicable, with the Wind-Down Trust Beneficiaries treated as grantors and owners of the Wind-Down Trust. However, with respect to any of the assets of the Wind-Down Trust that are subject to potential disputed claims of ownership or uncertain distributions, *or* to the extent “liquidating trust” treatment is otherwise unavailable, the Debtors anticipate that such assets will be subject to disputed ownership fund treatment under Section 1.468B-9 of the Treasury Regulations, that any appropriate elections with respect thereto shall be made, and that such treatment will also be applied to the extent possible for state and local tax purposes. Under such treatment, a separate federal income tax return shall be filed with the IRS for any such account. Any taxes (including with respect to interest, if any, earned in the account) imposed on such account shall be paid out of the assets of the respective account (and reductions shall be made to amounts disbursed from the account to account for the need to pay such taxes).

4. Appointment of Wind-Down Trustee

The Wind-Down Trustee shall be selected by the Committee, in consultation with the Debtors, and shall be identified in the Plan Supplement. The appointment of the Wind-Down Trustee shall be approved in the Confirmation Order, and the Wind-Down Trustee’s duties shall commence as of the Effective Date. The Wind-Down Trustee shall administer the distributions to the Wind-Down Trust Beneficiaries and shall serve as a representative of the Estates under section 1123(b) of the Bankruptcy Code for the purpose of enforcing Vested Causes of Action belonging to the Estates that are not released, waived, settled, compromised, or transferred pursuant to the Plan and subject to the limitations set forth in the Plan, including Article IV.F and Article IV.G.



In accordance with the Wind-Down Trust Agreement, the Wind-Down Trustee shall serve in such capacity through the earlier of (i) the date on which the Wind-Down Trust is dissolved in accordance with the Wind-Down Trust Agreement, and (ii) the date on which a Wind-Down Trustee resigns, is terminated, or is otherwise unable to serve; *provided, however*, that, in the event that a Wind-Down Trustee resigns, is terminated, or is otherwise unable to serve, the Wind-Down Trust Oversight Committee shall appoint a successor to serve as a Wind-Down Trustee in accordance with the Wind-Down Trust Agreement. If the Wind-Down Trust Oversight Committee does not appoint a successor within the time periods specified in the Wind-Down Trust Agreement, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Wind-Down Trust, shall approve a successor to serve as a Wind-Down Trustee.

5. Responsibilities of Wind-Down Trustee

Responsibilities of the Wind-Down Trustee shall be as identified in the Wind-Down Trust Agreement and shall include, but are not limited to:

- (a) Implementing the Wind-Down Trust, and making the distributions contemplated by the Plan;
- (b) Marshalling, marketing for sale, and wind-down of any of the Debtors' assets constituting Wind-Down Trust Assets;
- (c) Filing and prosecuting any objections to Claims or Interests or settling or otherwise compromising such Claims and Interests, if necessary and appropriate, in accordance with the Plan hereof;
- (d) Commencing, prosecuting, or settling claims and Vested Causes of Action;
- (e) Recovering and compelling turnover of the Debtors' property;
- (f) Prosecuting and settling the 3AC Claims, FTX Claims, and Alameda Claims;
- (g) Paying Wind-Down Trust Expenses;
- (h) Abandoning any Debtor assets that cannot be sold or otherwise disposed of for value and where a distribution to Holders of Allowed Claims or Interests would not be feasible or cost-effective in the Wind-Down Trustee's reasonable judgment;
- (i) Preparing and filing post-Effective Date operating reports (including the month in which the Effective Date occurs);
- (j) Filing appropriate tax returns in the exercise of the Wind-Down Trustee's fiduciary obligations;
- (k) Retaining such Professionals as are necessary and appropriate in furtherance of the Wind-Down Trustee's fiduciary obligations; and
- (l) Taking such actions as are necessary and reasonable to carry out the purposes of the Wind-Down Trust, including winding down the Debtors' business affairs.

6. The Wind-Down Trust Oversight Committee

The Wind-Down Trust Oversight Committee shall consist of those parties selected by the Committee and identified in the Plan Supplement, and which, at no time shall consist of greater than seven members.

The Wind-Down Trust Oversight Committee shall have the responsibility to review and advise the Wind-Down Trustee with respect to the liquidation and distribution of the Wind-Down Entity Assets transferred to the Wind-Down Trust in accordance herewith and the Wind-Down Trust Agreement. For the avoidance of doubt, in advising the Wind-Down Trustee, the Wind-Down Trust Oversight Committee shall maintain the same fiduciary responsibilities as the Wind-Down Trustee. Vacancies on the Wind-Down Trust Oversight Committee shall be filled by a Person designated by the remaining member or members of the Wind-Down Trust Oversight Committee from among the Holders of Account Holder Claims. The Wind-Down Trustee shall have the authority to seek an order from the Bankruptcy Court removing or replacing members of the Wind-Down Trust Oversight Committee for cause.

7. Expenses of Wind-Down Trustee

The Wind-Down Trust Expenses shall be paid from the Wind-Down Trust Assets subject to the Wind-Down Reserve and the Non-Released D&O Claim Budget.

8. Insurance; Bond

The Wind-Down Trustee may obtain insurance coverage (in the form of an errors and omissions policy or otherwise) with respect to the liabilities and obligations of the Wind-Down Trustee and the Wind-Down Trust Oversight Committee under the Wind-Down Trust Agreement. Unless otherwise agreed to by the Wind-Down Trust Oversight Committee, the Wind-Down Trustee shall serve with a bond, the terms of which shall be agreed to by the Wind-Down Trust Oversight Committee, and the cost and expense of which shall be paid by the Wind-Down Trust.

9. Fiduciary Duties of the Wind-Down Trustee

Pursuant hereto and the Wind-Down Trust Agreement and the Wind-Down Trustee shall act in a fiduciary capacity on behalf of the interests of all Holders of Claims and Interests that will receive distributions pursuant to Plan.

10. Termination of the Wind-Down Trust

The Wind-Down Trust will terminate on the earlier of: (a) (i) the final liquidation, administration and distribution of the Wind-Down Trust Assets in accordance with the terms of the Wind-Down Trust Agreement and the Plan, and its full performance of all other duties and functions as set forth herein or in the Wind-Down Trust Agreement and (ii) the Chapter 11 Cases of the Debtors have been closed; or (b) the Wind-Down Trustee determines in its reasonable judgment that the Wind-Down Trust lacks sufficient assets and financial resources, after reasonable collection efforts, to complete the duties and powers assigned to him or her under the Plan, the Confirmation Order and/or the Wind-Down Trust Agreement. After (x) the final distributions pursuant hereto, (y) the Filing by or on behalf of the Wind-Down Trust of a certification of dissolution with the Bankruptcy Court, and (z) any other action deemed appropriate by the Wind-Down Trustee, the Wind-Down Trust shall be deemed dissolved for all purposes without the necessity for any other or further actions.

11. Liability of Wind-Down Trustee; Indemnification

Neither the Wind-Down Trustee, the Wind-Down Trust Oversight Committee, their respective members, employees, employers, designees or professionals, or any of their duly designated agents or representatives (each, a “Wind-Down Trust Party” and collectively, the “Wind-Down Trust Parties”) shall be liable for losses, claims, damages, liabilities or expenses in connection with the affairs of the Wind-Down Trust or for the act or omission of any other Wind-Down Trust Party, nor shall the Wind-Down Trust Parties be liable for any act or omission taken or omitted to be taken pursuant to the discretion, powers and authority conferred, or in good faith believed to be conferred by the Wind-Down Trust Agreement or the Plan other than for specific acts or omissions resulting from such Wind-Down Trust Party’s willful misconduct, gross negligence or actual fraud. Subject to the Wind-Down Trust Agreement, the Wind-Down Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee, and the Wind-Down Trust Oversight Committee shall be entitled to enjoy all of the rights, powers, immunities and privileges of an official committee of unsecured creditors. The Wind-Down Trustee or the Wind-Down Trust Oversight Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Wind-Down Trustee nor the Wind-Down Trust Oversight Committee shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Wind-Down Trustee, the Wind-Down Trust Oversight Committee, or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or actual fraud. The Wind-Down Trust shall indemnify and hold harmless the Wind-Down Trust Parties (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys’ fees, disbursements, and related expenses) that such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Wind-Down Trust or the Plan or the discharge of their duties hereunder; *provided, however*, that no such indemnification will be made to such Persons for actions or omissions as a result of willful misconduct, gross negligence, or actual fraud. Persons dealing or having any relationship with the Wind-Down Trustee shall have recourse only to the Wind-Down Trust Assets and shall look only to the Wind-Down Trust Assets to satisfy any liability or other obligations incurred by the Wind-Down Trustee or the Wind-Down Trust Oversight Committee to such Person in carrying out the terms of the Wind-Down Trust Agreement, and neither the Wind-Down Trustee nor the Wind-Down Trust Oversight Committee, shall have any personal obligation to satisfy any such liability. The Wind-Down Trustee and/or the Wind-Down Trust Oversight Committee members shall not be liable whatsoever except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into the Wind-Down Trust Agreement against any of them. The Wind-Down Trust shall promptly pay expenses reasonably incurred by any Wind-Down Trust Party in defending, participating in, or settling any action, proceeding or investigation in which such Wind-Down Trust Party is a party or is threatened to be made a party or otherwise is participating in connection with the Wind-Down Trust Agreement or the duties, acts or omissions of the Wind-Down Trustee or otherwise in connection with the affairs of the Wind-Down Trust, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Wind-Down Trust Party hereby undertakes, and the Wind-Down Trust hereby accepts his or her undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such exculpated party is not entitled to be indemnified therefor under the Wind-Down Trust Agreement. The foregoing indemnity in respect of any Wind-Down

Trust Party shall survive the termination of such Wind-Down Trust Party from the capacity for which they are indemnified.

12. No Liability of the Wind-Down Trust.

On and after the Effective Date, the Wind-Down Trust shall have no liability on account of any Claims or Interests except as set forth herein and in the Wind-Down Trust Agreement. All payments and all distributions made by the Wind-Down Trustee hereunder shall be in exchange for all Claims or Interests against the Debtors.

**I. Sources of Consideration for Plan Distributions**

Distributions under the Plan shall be funded by (i) the proceeds of Purchaser's payment obligations under Sections 2.1 and 2.2 of the Asset Purchase Agreement and distributions of Acquired Coins pursuant to Sections 6.12, and 6.14 of the Asset Purchase Agreement, (ii) the Wind-Down Entity or Wind-Down Trust (as applicable) from the Wind-Down Entity Assets or Wind-Down Trust Assets (as applicable); *provided, however*, that Allowed Professional Fee Claims shall be paid from the Professional Fee Escrow Account in the first instance. The Wind-Down Entity Assets or Wind-Down Trust Assets (as applicable) shall be used to pay the Wind-Down Entity Expenses (including the compensation of the Wind-Down Trustee and any professionals retained by the Wind-Down Trust), and to satisfy payment of Allowed Claims and Interests as set forth in the Plan.

**J. Corporate Existence and Dissolution**

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) in effect prior to the Effective Date, except to the extent such certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) are amended pursuant to the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings under applicable state or federal law).

On and after the Effective Date, the Wind-Down Entity will be authorized and directed to implement the Plan and any applicable orders of the Bankruptcy Court, and the Wind-Down Entity shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

Upon a certification to be Filed with the Bankruptcy Court by the Wind-Down Trustee of all distributions having been made and completion of all of its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Wind-Down Debtors shall be deemed to be dissolved without any further action by the Wind-Down Debtors, including the Filing of any documents with the secretary of state for the state in which the Wind-Down Debtors are formed or any other jurisdiction. The Wind-Down Trustee, however, shall have authority to take all necessary actions to dissolve the Wind-Down Debtors in and withdraw the Wind-Down Debtors from applicable states.

As soon as practicable after the Effective Date, the Wind-Down Entity shall take such actions as the Wind-Down Entity may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Wind-Down Entity on behalf of any Wind-Down Debtor without need for any action or approval by the shareholders or board of directors or managers of such Debtor. On and after the Effective Date, the Wind-Down Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. Notwithstanding such Debtors' dissolution, such Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

#### **K. Corporate Action**

Upon the Effective Date, all actions contemplated under the Plan, Definitive Documents, and Asset Purchase Agreement shall be deemed authorized and approved in all respects, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, managing-members, limited or general partners, or officers of the Debtors, the Wind-Down Debtors, the Wind-Down Trust or any other Entity, including: (1) appointment of the directors, managers, members, and officers for the Wind-Down Debtors as provided herein; (2) the issuances, transfer, and distribution of the Wind-Down Trust Units; (3) the formation of the Wind-Down Trust and appointment of the Wind-Down Trustee and Wind-Down Trust Oversight Committee; (4) the formation of any entities pursuant to and the implementation of the Plan and performance of all actions and transactions contemplated hereby and thereby; (5) the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; and (6) all other acts or actions contemplated by the Plan, Definitive Documents, and Asset Purchase Agreement or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions (including effectuating the Restructuring Transactions Memorandum and the Customer Onboarding Protocol) (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan, Definitive Documents, and Asset Purchase Agreement involving the corporate structure of the Debtors or the Wind-Down Debtors, as applicable, and any corporate action required by the Debtors or the Wind-Down Debtors, as applicable, in connection with the Plan shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Wind-Down Debtors, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Wind-Down Debtors or the Wind-Down Trust, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, Securities, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Wind-Down Debtors, and any and all other agreements, documents, Securities, and instruments relating to the foregoing. The



authorizations and approvals contemplated by this Article IV.K shall be effective notwithstanding any requirements under non-bankruptcy law.

**L. Vesting of Assets in the Wind-Down Entity**

Except as otherwise provided in the Plan, or in any agreement, instrument, or other document incorporated in the Plan, notwithstanding any prohibition of assignability under applicable non-bankruptcy law and in accordance with section 1141 of the Bankruptcy Code, on the Effective Date, all property constituting Wind-Down Trust Assets, including all Vested Causes of Action of the Debtors (unless otherwise released, waived, compromised, settled, transferred, or discharged pursuant to the Plan), and any property acquired by any of the Debtors under the Plan shall vest in the Wind-Down Entity, free and clear of all Liens, Claims, charges, or other encumbrances.

**M. Cancellation of Notes, Instruments, Certificates, and Other Documents**

On the later of the Effective Date and the date on which distributions are made pursuant to the Plan (if not made on the Effective Date), except for the purpose of evidencing a right to and allowing Holders of Claims and Interests to receive a distribution under the Plan or to the extent otherwise specifically provided for in the Plan, the Confirmation Order, or any agreement, instrument, or other document entered into in connection with or pursuant to the Plan or the Restructuring Transactions (including, without limitation, the Definitive Documents and the Asset Purchase Agreement), all notes, bonds, indentures, certificates, Securities, shares, purchase rights, options, warrants, collateral agreements, subordination agreements, intercreditor agreements, or other instruments or documents directly or indirectly evidencing, creating, or relating to any indebtedness or obligations of, or ownership interest in, the Debtors, giving rise to any Claims against or Interests in the Debtors or to any rights or obligations relating to any Claims against or Interests in the Debtors shall be deemed cancelled without any need for a Holder to take further action with respect thereto.

**N. Effectuating Documents; Further Transactions**

On and after the Effective Date, the Wind-Down Debtors, and its directors, managers, partners, officers, authorized persons, and members thereof, and the Wind-Down Trust and Wind-Down Trustee are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, Definitive Documents, and Asset Purchase Agreement, in the name of and on behalf of the Wind-Down Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

**O. Section 1146(a) Exemption**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Wind-Down Debtor, the Wind-Down Trust, the Purchaser, or to any other Entity) of property under the Plan, Definitive Documents, and Asset Purchase Agreement or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Wind-Down Debtors; (2) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, including the Asset Purchase Agreement, shall not be subject to any



In accordance with section 1123(b) of the Bankruptcy Code, the Wind-Down Entity shall succeed to all rights to commence and pursue any and all Vested Causes of Action of the Debtors, whether arising before or after the Petition Date, including, without limitation, any actions specifically enumerated in the Schedule of Retained Causes of Action other than Causes of Action released, waived, settled, compromised, or transferred. Such rights shall be preserved by the Debtors and Wind-Down Debtors and shall vest in the Wind-Down Entity, with the Wind-Down Entity's rights to commence, prosecute, or settle such Causes of Action preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action expressly released, waived, settled, compromised, or transferred by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan or pursuant to the Asset Purchase Agreement, which shall be deemed released and waived by the Debtors and Wind-Down Debtors as of the Effective Date.

The Wind-Down Trust, on behalf of the Debtors and Wind-Down Debtors, reserves and shall retain such Causes of Action of the Debtors notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold against any Entity shall vest in the Wind-Down Trust, except as otherwise provided in the Plan, including Article VIII of the Plan. The Wind-Down Trust, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Wind-Down Trust shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce,

abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court in accordance with the Plan.

**Q. Election to Contribute Third-Party Claims**

Because aggregating all Contributed Third-Party Claims may enable the pursuit and settlement of such litigation claims in a more efficient and effective manner, each Holder of a Claim or Interest may agree, by electing on its ballot or opt-in form, to contribute its Contributed Third-Party Claims to the Wind-Down Entity. By electing such option on its ballot or opt-in form, each Contributing Claimant agrees that, subject to the occurrence of the Effective Date and the formation of the Wind-Down Entity, it will be deemed, without further action, (i) to have irrevocably contributed its Contributed Third-Party Claims to the Wind-Down Entity, and (ii) to have agreed to execute any documents reasonably requested by the Debtors or the Wind-Down Entity to memorialize and effectuate such contribution.

**R. Contribution of Contributed Third-Party Claims**

On the Effective Date, all Contributed Third-Party Claims will be irrevocably contributed to the Wind-Down Entity and shall thereafter be Wind-Down Trust Assets for all purposes. No Person may rely on the absence of a specific reference in the Plan, the Disclosure Statement, the Confirmation Order, the Wind-Down Trust Agreement, the Plan Supplement, or any other document as any indication that the Wind-Down Trust will or will not pursue any and all available Contributed Third-Party Claims against such Person. The Wind-Down Trust shall have, retain, reserve, and be entitled to assert all Contributed Third-Party Claims fully to the same extent that the Contributing Claimants could have asserted such claims prior to the Effective Date. For the avoidance of doubt, the Contributed Third-Party Claims shall not include the rights of any of the Contributing Claimants to receive the distributions under the Plan on account of their Claims or Interests.

**S. Closing the Chapter 11 Cases**

On and after the Effective Date, the Wind-Down Entity shall be permitted to classify all of the Chapter 11 Cases of the Debtors except for the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, as closed, and all contested matters relating to any of the Debtors, including objections to Claims or Interests and any adversary proceedings, may be administered and heard in the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, irrespective of whether such Claims or Interests were Filed or such adversary proceeding was commenced against a Debtor whose Chapter 11 Case was closed.

**ARTICLE V.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption and Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy other than the Side-A Policy. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

#### **B. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or the Wind-Down Debtors, as applicable, under such Executory Contract or Unexpired Lease. Without limiting the general nature of the foregoing, and notwithstanding any non-bankruptcy law to the contrary, the Debtors and Wind-Down Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to any rejected Executory Contract or Unexpired Lease.

#### **C. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Counterparties to Executory Contracts or Unexpired Leases listed subject to rejection under the Plan shall be served with a notice of rejection of Executory Contracts and Unexpired Leases with the Plan Supplement. Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Claims, Noticing, and Solicitation Agent and served on the Debtors or Wind-Down Entity, as applicable, no later than thirty days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, or the Wind-Down Entity, the Estates, or their property without the need for any objection by the Wind-Down Entity or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed released, and be subject to the permanent injunction set forth in Article VIII.D of the Plan, including any Claims against any Debtor listed on the Debtors' schedules as unliquidated, contingent, or disputed.** All Allowed Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease shall be treated as General Unsecured Claims in accordance with Article III.C of the Plan.

#### **D. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed**

The Debtors, the Wind-Down Entity, or the Purchaser, as applicable pursuant to the Asset Purchase Agreement, shall pay Cures, if any, on the Effective Date. The Debtors shall provide notice of

In the event of a dispute regarding: (1) the amount of any Cure Claim, (2) the ability of the Wind-Down Debtors, Purchaser, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed (or assumed and assigned, as applicable), or (3) any other matter pertaining to assumption or assignment, then any disputed Cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made as soon as reasonably practicable following, and in accordance with, the entry of a Final Order of the Bankruptcy Court resolving such dispute or as may be agreed upon by the Debtors, the Wind-Down Entity, or Purchaser, as applicable, and the counterparty to the Executory Contract or Unexpired Lease, and any such unresolved dispute shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

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Each D&O Liability Insurance Policy (including, without limitation, any “tail policy” and all agreements, documents, or instruments related thereto) other than the Side-A Policy shall be assumed, in their entirety, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date, pursuant to sections 105 and 365 of the Bankruptcy Code with the Wind-Down Entity being authorized to pursue any proceeds thereof on behalf of the Debtors or the Wind-Down Entity. The Side-A Policy shall ride through these Chapter 11 Cases with the Debtors, and the Wind-Down Entity preserves all avoidance and other actions in connection with the premium paid thereunder. All beneficiaries under the D&O Insurance Policies reserve their rights under such D&O Insurance Policies subject to the limitations set forth in this Plan.

The Debtors shall continue to satisfy their obligations under their surety bonds and insurance policies in full and continue such programs in the ordinary course of business. Each of the Debtors' surety bonds and insurance policies, and any agreements, documents, or instruments relating thereto shall be treated as Executory Contracts under the Plan. On the Effective Date: (a) the Debtors shall be deemed to have assumed all such surety bonds and insurance policies and any agreements, documents, and instruments relating thereto in their entirety; *provided* that the Debtors have assumed all indemnity agreements and cash collateral agreements related to the surety bonds and (b) such surety bonds and insurance policies and any agreements, documents, or instruments relating thereto shall revert in the applicable Wind-Down Debtor(s) unaltered.



**F. Reservation of Rights**

Nothing contained in the Plan or the Plan Supplement (unless otherwise explicitly provided) shall constitute an admission by the Debtors or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Wind-Down Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Wind-Down Entity, as applicable, shall have forty-five days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease, including by rejecting such contract or lease effective as of the Confirmation Date.

**G. Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**H. Contracts and Leases Entered into After the Petition Date**

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed under section 365 of the Bankruptcy Code, will be performed by the applicable Debtor or Wind-Down Debtor liable thereunder in the ordinary course of its business. Such contracts and leases that are not rejected under the Plan shall survive and remain unaffected by entry of the Confirmation Order.

**ARTICLE VI.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Timing and Calculation of Amounts to Be Distributed**

Except (1) as otherwise provided herein, (2) upon a Final Order, or (3) as otherwise agreed to by the Debtors, the Purchaser, or the Wind-Down Entity, as the case may be, and the Holder of the applicable Claim, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the next Distribution Date after such Claim becomes, as applicable, an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim shall receive the full amount of distributions that the Plan provides for Allowed Claims in the applicable Class from the Distribution Agent. In the event that any payment or distribution under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or distribution may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as specifically provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

**B. Rights and Powers of Distribution Agent**

**1. Powers of the Distribution Agent**

The Distribution Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties and exercise its rights under the Plan; (b) make all distributions contemplated under the Plan; (c) employ professionals to represent it with respect to its responsibilities and powers; and (d) exercise such other powers as may be vested in the

Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

2. Expenses Incurred on or after the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Distribution Agent on or after the Effective Date and any reasonable compensation and expense reimbursement claims (including reasonable attorney and/or other professional fees and expenses) made by such Distribution Agent shall be paid in Cash by the Wind-Down Entity.

**C. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

1. Distributions Generally

Except as otherwise provided in the Plan (including in paragraph 8 below), the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the applicable register or in the Debtors' records as of the date of any such distribution (as applicable), including the address set forth in any Proof of Claim filed by that Holder.

2. Distributions on Account of Obligations of Multiple Debtors

For all purposes associated with distributions under the Plan, all guarantees by any Debtor of the obligations of any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be deemed eliminated so that any obligation that could otherwise be asserted against more than one Debtor shall result in a single distribution under the Plan. Any such Claims shall be subject to all potential objections, defenses, and counterclaims, and to estimation pursuant to section 502(c) of the Bankruptcy Code.

3. Record Date of Distributions

On the Distribution Record Date, the various transfer registers for each Class of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes in the record Holders of any Claims or Interests. The Distribution Agent shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date. In addition, with respect to payment of any Cure amounts or disputes over any Cure amounts, neither the Debtors nor the Distribution Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable Executory Contract or Unexpired Lease as of the Effective Date, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure amount.

4. Special Rules for Distributions to Holders of Disputed Claims and Interests

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the Wind-Down Entity, on the one hand, and the Holder of a Disputed Claim or Interest, on the other hand, or as set forth in a Final Order, no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Interest until all of the Disputed Claim or Interest has become an Allowed Claim or Interest or has otherwise been resolved by settlement or Final Order; *provided* that, if the Wind-Down Entity does not dispute a portion of an amount asserted pursuant to an otherwise Disputed Claim or Interest, the Distribution Agent may make a partial distribution on account of that portion of such Claim or Interest that is not Disputed at the time and in the manner that the Distribution Agent

makes distributions to similarly situated Holders of Allowed Claims or Interests pursuant to the Plan. Any dividends or other distributions arising from property distributed to Holders of Allowed Claims or Interests, as applicable, in a Class and paid to such Holders under the Plan shall also be paid, in the applicable amounts, to any Holder of a Disputed Claim or Interest, as applicable, in such Class that becomes an Allowed Claim or Interest after the date or dates that such dividends or other distributions were earlier paid to Holders of Allowed Claims or Interests in such Class.

5. De Minimis Distributions; Minimum Distributions

The Distribution Agent shall not make any Cash distributions to any Holder of an Allowed Claim or Interest pursuant to Article III.C.1-11 of this Plan on account of such Allowed Claim or Interest if such distribution is valued, in the reasonable discretion of the Distribution Agent, at less than \$1.00, and each Holder of an Allowed Claim or Interest to which this limitation applies shall not be entitled to any distributions under the Plan. Notwithstanding anything to the contrary in this Plan, there shall be no minimum distribution threshold on account of distributions of any Cryptocurrency to Holders of Allowed Account Holder Claims and Allowed OpCo General Unsecured Claims.

6. Undeliverable Distributions and Unclaimed Property

In the event that either (a) a distribution to any Holder is returned as undeliverable or (b) the Holder of an Allowed Claim or Interest does not respond to a request by the Debtors or the Distribution Agent for information necessary to facilitate a particular distribution, no distribution to such Holder shall be made unless and until the Distribution Agent has determined the then-current address of such Holder or received the necessary information to facilitate a particular distribution, at which time such distribution shall be made to such Holder without interest, dividends, or other accruals of any kind; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code on the date that is one year after the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Wind-Down Entity automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable local, state, federal, or foreign escheat, abandoned, or unclaimed property laws to the contrary), and the Claim or Interest of any Holder to such property or interest in property shall not be entitled to any distributions under the Plan.

7. Manner of Payment Pursuant to the Plan

At the option of the Distribution Agent, any Cash payment to be made hereunder may be made by check, wire transfer, automated clearing house, credit card, or as otherwise provided in applicable agreements.

8. Distributions of Net Owed Coins; Additional Bankruptcy Distributions

As a general matter, the Purchaser will allocate each Account Holder's Net Owed Coins to its account on the Binance.US Platform, and each Holder of OpCo General Unsecured Claim's Pro Rata share of the Distributable Cryptocurrency (in Cash) to its account on the Binance.US Platform in accordance with, and subject to, the provisions of Section 6.12 of the Asset Purchase Agreement.

As a general matter, the Customer Onboarding Protocol will provide that Purchaser will make Additional Bankruptcy Distributions to Transferred Creditors corresponding to their Pro Rata shares of such Additional Bankruptcy Distribution (if such Additional Bankruptcy Distribution is in Cryptocurrency, based on the Transferred Cryptocurrency Value of the Cryptocurrency included in such

Additional Bankruptcy Distribution), all in accordance with any applicable Post-Bankruptcy Statement (as defined in the Asset Purchase Agreement).

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim does not become a Transferred Creditor prior to the date that is three (3) months following the later of the Closing Date or the date on which the terms and conditions for the Binance.US Platform are made available for such Person to accept (as provided in the Customer Onboarding Protocol), then Purchaser shall convert any Cryptocurrency allocable to such Person into U.S. Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such U.S. Dollars, together with any cash or other assets in respect of such Persons, to the Debtors within five (5) Business Days, for further distribution by the Debtors in accordance with this Plan and the Customer Onboarding Protocol.

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim is located in an Unsupported Jurisdiction (as defined in the Asset Purchase Agreement), then the Net Owed Coins, if applicable, and Additional Bankruptcy Distributions allocable to such Person shall be handled pursuant to Section 6.12(b) or, if applicable, Section 6.14(d) of the Asset Purchase Agreement.

Purchaser shall have no responsibility to make any distributions other than as contemplated by Sections 6.12 and 6.14 of the Asset Purchase Agreement.

#### **D. Compliance Matters**

In connection with the Plan, to the extent applicable, the Debtors, the Wind-Down Entity, any Distribution Agent, and any other applicable withholding and reporting agents shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Wind-Down Entity, the Distribution Agent, and any other applicable withholding and reporting agents shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including wind-down a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms that are reasonable and appropriate; *provided* that the Wind-Down Entity and the Distribution Agent, as applicable, shall request appropriate documentation from the applicable distributees and allow such distributees a reasonable amount of time to respond. The Debtors, the Wind-Down Entity, the Distribution Agent, and any other applicable withholding and reporting agents reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

**E. Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim, asserted in government issued currency (for the avoidance of doubt, not including any Cryptocurrency) other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

**F. Claims Paid or Payable by Third Parties**

1. Claims Paid by Third Parties

The Debtors or the Wind-Down Entity, as applicable, shall reduce a Claim or Interest, and such Claim or Interest (or portion thereof) shall be disallowed without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim or Interest receives a payment on account of such Claim or Interest from a party that is not a Debtor or Wind-Down Debtor (or other Distribution Agent), as applicable, including any payments made in connection with the Sale Transaction. To the extent a Holder of a Claim or Interest receives a distribution on account of such Claim or Interest and receives payment from a party that is not a Debtor or a Wind-Down Debtor (or other Distribution Agent), including payments made in connection with the Sale Transaction, as applicable, on account of such Claim or Interest, such Holder shall, within ten Business Days of receipt thereof, repay, return, or deliver any distribution held by or transferred to the Holder to the applicable Wind-Down Debtor to the extent the Holder's total recovery on account of such Claim or Interest from the third party and under the Plan exceeds the amount of such Claim or Interest as of the date of any such distribution under the Plan. The failure of such Holder to timely repay, return, or deliver such distribution shall result in the Holder owing the applicable Wind-Down Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the ten-Business Day grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim or Interest that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim or Interest has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim or Interest (if and to the extent adjudicated by a court of competent jurisdiction or otherwise settled), then immediately upon such payment, such Claim or Interest may be expunged or reduced on the Claims Register by the Claims, Noticing, and Solicitation Agent to the extent of any such payment without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

### 3. Applicability of Insurance Policies

Except as otherwise provided herein, payments to Holders of Claims or Interests shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any rights, defenses, or Cause of Action that the Debtors, the Wind-Down Entity or any other Entity may hold against any other Entity, including insurers, under any policies of insurance, agreements related thereto, or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers under the applicable insurance policies, agreements related thereto, and applicable non-bankruptcy law.

### **G. Setoffs and Recoupment**

Except as otherwise expressly provided for herein, each Debtor, Wind-Down Debtor, the Wind-Down Entity, or such Entity's designee as instructed by such Debtor, Wind-Down Entity, as applicable, may, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, set off against or recoup from an Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature whatsoever that the Debtor, Wind-Down Debtor or Wind-Down Entity, as applicable, may have against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised, settled, or released on or prior to the Effective Date (whether pursuant to the Plan or otherwise). Notwithstanding the foregoing, except as expressly stated in Article VIII of this Plan, neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Debtors or the Wind-Down Entity of any such Claims, rights, or Causes of Action the Debtors or the Wind-Down Entity may possess against such Holder.

### **H. Allocation between Principal and Accrued Interest**

Except as otherwise provided herein, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof and as determined for federal income tax purposes) and second, to the extent the consideration exceeds the principal amount of the Allowed Claims, to the remaining portion of such Allowed Claim if any.

## **ARTICLE VII.**

### **PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS AND INTERESTS**

#### **A. Disputed Claims Process**

After the Effective Date, the Wind-Down Entity, and any party-in-interest, shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim or Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim or Interest. If a Holder of a Claim or Interest in Class disputes the amount of their Claim or Interest as listed in the Schedules, the Holder should notify the Debtors or the Wind-Down Entity of such



Notwithstanding any provision herein to the contrary, nothing in the Disclosure Statement, Plan, or Confirmation Order grants the Bankruptcy Court with jurisdiction over any police and regulatory actions by the SEC, and the SEC shall retain the power and authority to commence and continue any such actions against any person or entity, including without limitation, the Debtors, in any forum with jurisdiction, provided, however, that enforcement of any money judgment against the Debtors must be in accordance with the Plan. In addition, the SEC may file any proof of claim by the Government Bar Date or such later date as ordered by the Bankruptcy Court and amend its proof of claim upon determination of liability on its claims. Any objection to such claim shall be in accordance with Bankruptcy Rule 3007, and such claim shall not automatically be deemed objected to, withdrawn, or expunged.

## B. Objections to Claims or Interests

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respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Article IV.P of the Plan.

Any objections to Claims or Interests shall be Filed on or before the Claims Objection Bar Date. For the avoidance of doubt, the Bankruptcy Court may extend the time period to object to Claims or Interests set forth in this paragraph at any time, including before or after the expiration of one hundred eighty days after the Effective Date, in its discretion or upon request by the Debtors or any party in interest.

### **C. Estimation of Claims**

Before or after the Effective Date, the Debtors or the Wind-Down Entity, as applicable, may (but are not required to), at any time, request that the Bankruptcy Court estimate any Disputed Claim or Interest that is contingent or unliquidated pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any party previously has objected to such Disputed Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under sections 157 and 1334 of the Judicial Code to estimate any such Disputed Claim or Interest, including during the litigation of any objection to any Disputed Claim or Interest or during the pendency of any appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Disputed Claim or Interest that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions) and may be used as evidence in any supplemental proceedings, and the Debtors or the Wind-Down Entity may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Disputed Claim or Interest that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen days after the date on which such Disputed Claim or Interest is estimated.

### **D. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, if any portion of a Claim or Interest is a Disputed Claim or Interest, no payment or distribution provided hereunder shall be made on account of such Claim or Interest unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest; *provided* that if only a portion of a Claim or Interest is Disputed, such Claim or Interest shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account of such undisputed amount.

### **E. Distributions After Allowance**

To the extent that a Disputed Claim or Interest ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim or Interest in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court Allowing any Disputed Claim or Interest becomes a Final Order, the Distribution Agent shall provide to the Holder of such Allowed Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or

accruals to be paid on account of such Allowed Claim or Interest unless required under applicable bankruptcy law.

**F. No Interest**

Unless otherwise specifically provided for herein or by Final Order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims against the Debtors, and no Holder of a Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

**G. Adjustment to Claims and Interests without Objection**

Any Claim or Interest that has been paid, satisfied, amended, superseded, cancelled, or otherwise expunged (including pursuant to the Plan) may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Entity without the Wind-Down Entity having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court. Additionally, any Claim or Interest that is duplicative or redundant with another Claim or Interest against the same Debtor may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Entity without the Wind-Down Entity having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

**H. Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date.

**I. Disallowance of Claims or Interests**

Any Claims or Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors or the Wind-Down Entity, as applicable.

**Except as otherwise provided herein or as agreed to by the Debtors or the Wind-Down Entity, any and all Proofs of Claim Filed after the Bar Date shall be deemed disallowed and expunged as of the Effective Date without any further notice to, or action, order, or approval of, the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.**

**J. Amendments to Proofs of Claim**

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Proof of Claim or Proof of Interest may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Wind-Down Entity, and any such new or amended Proof of Claim or Proof of



but such Non-Released D&O Claims shall remain subject to the limitations contained in Article IV.E and Article IV.F of this Plan.

**B. Releases by Holders of Claims and Interests**

Except as expressly set forth in the Plan, effective on the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives, from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of any of the Debtors, that such Entity would have been legally entitled to assert in its own right (whether individually or collectively or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions, or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date, *provided* that nothing in this Article VIII.B shall be construed to release the Released Parties from actual fraud, willful misconduct, or gross negligence as determined by a Final Order.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Article VIII.B, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.B is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to the extent contemplated by Article IV.F and Article IV.G of the Plan, a bar to any of the Releasing Parties or the Debtors or Wind-Down Debtors or their respective Estates or Wind-Down Entity asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

**C. Exculpation**

Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor release or the third-party release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is exculpated from any Cause of Action for any act or omission arising on or after the Petition Date and prior to the Effective Date based on the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation or filing, or consummation of the Disclosure



Statement, the Plan, the Special Committee Investigation, any Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), except for Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan

#### **D. Injunction**

The assets of the Debtors and of the Wind-Down Entity shall be used for the satisfaction of expense obligations and the payment of Claims and Interests only in the manner set forth in this Plan and shall not be available for any other purpose. All Persons and Entities who have held, hold, or may hold Claims or Interests based upon any act, omission, transaction, or other activity of any kind or nature related to the Debtors, the Wind-Down Entity, or the Debtors' Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in the Plan or the Confirmation Order, shall be precluded and permanently enjoined on and after the Effective Date from interfering with the use and distribution of the Debtors' assets in the manner contemplated by the Plan.

In addition, as of the Effective Date and subject to the occurrence of the Effective Date, except as otherwise specifically provided in this Plan or the Confirmation Order, all Persons and Entities who have held, hold, or may hold Claims or Interests that are fully satisfied pursuant to the Plan or any Claim or Interest that is subject to the releases and exculpations set forth in Article VIII.B and Article VIII.C of this Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims or Interests, except for the receipt of the payments or distributions that are contemplated by this Plan.

#### **E. Release of Liens**

Except as otherwise provided in the Plan, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan or Confirmation Order on the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or Wind-Down Debtor, as applicable,



and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as requested by the Debtors or Wind-Down Entity to evidence the release of such Lien, including the execution, delivery, and filing or recording of such documents evidencing such releases. The presentation or filing of the Confirmation Order to or with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

#### **F. OSC and SEC**

Notwithstanding any language to the contrary herein, no provision shall (a) preclude the OSC or the SEC from enforcing its police or regulatory powers; or (b) enjoin, limit, impair or delay the OSC or SEC from commencing or continuing any claims, causes of action, proceeding, or investigations against any non-Debtor person or non-Debtor entity in any forum.

#### **G. Protection against Discriminatory Treatment**

As provided by section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Entity, including Governmental Units, shall discriminate against any Wind-Down Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, any Wind-Down Debtor, or any Entity with which a Wind-Down Debtor has been or is associated, solely because such Wind-Down Debtor was a debtor under chapter 11 of the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

#### **H. Document Retention**

Upon the occurrence of the Effective Date, the Debtors' books and records shall be transferred to the Wind-Down Entity, which shall continue to preserve all financial books and records, emails, and other financial documents relating to the Debtors' business that are currently in the Debtors' possession. The Wind-Down Trust shall not destroy or otherwise abandon any such documents or records without providing advance notice to the U.S. Securities and Exchange Commission (c/o Therese Scheuer, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, ScheuerT@SEC.GOV) and seeking further authorization from this Court. Nothing in this Plan or the Confirmation Order shall affect the obligations of the pre-Effective Date Debtors, the Wind-Down Entity, and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

#### **I. Reimbursement or Contribution**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a



## B. Waiver of Conditions Precedent

The Debtors, with the consent of the Committee and, solely to the extent related to the Asset Purchase Agreement and the Sale Transaction, prior to the Outside Date, the consent of Purchaser, may waive any of the conditions to the Effective Date set forth in Article IX.A of the Plan at any time, without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan.

### C. Effect of Non-Occurrence of Conditions to Consummation

If the Effective Date does not occur within 120 days after the Confirmation Date, then the Plan will be null and void in all respects, any and all compromises or settlements not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including with respect to the fixing, limiting, or treatment of any Claim or Interest, including, without limitation, the Alameda Loan Facility Claims), shall be deemed null and void, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims, Interests, or Causes of Action held by any Debtor or any other Entity; (2) prejudice in any manner the rights of any Debtor or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity in any respect.

## ARTICLE X.

## MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

### A. Modification of Plan

Subject to the limitations and terms contained in the Plan and Purchaser's consent rights under the Asset Purchase Agreement, the Debtors, with the consent of the Committee, reserve the right to (1) amend or modify the Plan before the entry of the Confirmation Order, in accordance with the Bankruptcy Code and the Bankruptcy Rules and (2) after the entry of the Confirmation Order, the Debtors or the Wind-Down Entity, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein.

### B. Effect of Confirmation on Modifications

Entry of the Confirmation Order shall constitute approval of all modifications or amendments to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

### C. Revocation or Withdrawal of Plan

The Debtors reserve the right, with the consent of the Committee, to revoke or withdraw the Plan with respect to any or all Debtors before the Confirmation Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then:

(1) the Plan will be null and void in all respects; (2) any settlement or compromise not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Classes of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effectuated by the Plan, and any document or agreement executed pursuant to the Plan will be null and void in all respects; and (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity, (b) prejudice in any manner the rights of any Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

## **ARTICLE XI.**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
3. resolve any matters related to Executory Contracts or Unexpired Leases, including:  
(a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Claims or other Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed or assumed and assigned; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;
4. ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;
5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor or the Estates that may be pending on the Effective Date;
6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, and other agreements or documents created in connection with the Plan; *provided* that the Bankruptcy Court shall not retain jurisdiction over disputes concerning documents contained in the Plan Supplement that have a jurisdictional, forum selection, or dispute resolution clause that refers disputes to a different court;

7. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;
8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;
9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or an Interest for amounts not timely repaid pursuant to Article VI of the Plan; (b) with respect to the releases, injunctions, and other provisions contained in Article VIII of the Plan, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) anything that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan and the Confirmation Order; or (d) related to section 1141 of the Bankruptcy Code;
11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
12. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;
13. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
14. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases with respect to any Entity, and resolve any cases, controversies, suits, or disputes that may arise in connection with any Entity's rights arising from or obligations incurred in connection with the Plan;
15. hear and determine matters concerning local, state, federal, and foreign taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
16. enter an order or Final Decree concluding or closing the Chapter 11 Cases;
17. enforce all orders previously entered by the Bankruptcy Court; and
18. hear and determine any other matters related to the Chapter 11 Cases and not inconsistent with the Bankruptcy Code or the Judicial Code.

Nothing herein limits the jurisdiction of the Bankruptcy Court to interpret and enforce the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, or the Disclosure Statement, without regard to whether the controversy with respect to which such interpretation or enforcement relates may be pending in any state or other federal court of competent jurisdiction.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11

## ARTICLE XII.

### A. Immediate Binding Effect

## B. Additional Documents

### C. Payment of Statutory Fees

#### D. Dissolution of Statutory Committees

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#### **E. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests, unless and until the Effective Date has occurred.

#### **F. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of each such Entity.

#### **G. Service of Documents**

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Wind-Down Debtors shall be served on:

Wind-Down Debtors

**Voyager Digital Holdings, Inc.**

33 Irving Place

New York, New York 10003

Attention: David Brosgol

General Counsel,

E-mail address: dbrosgol@investvoyager.com

with copies for information only (which shall not constitute notice) to:

Counsel to the Debtors

**Kirkland & Ellis LLP**

**Kirkland & Ellis International LLP**

601 Lexington Avenue

New York, New York 10022

Attention: Joshua A. Sussberg, P.C., Christopher Marcus,

P.C., Christine A. Okike, P.C., and Allyson B. Smith

Counsel to the Committee

**McDermott Will & Emery LLP**

One Vanderbilt Avenue

New York, New York 10017

Attention: Darren Azman

#### **H. Entire Agreement; Controlling Document**

Except as otherwise indicated, on the Effective Date, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations with respect to the subject matter of the Plan, all of which will have become merged and integrated into the Plan; *provided, however*, that notwithstanding the foregoing or anything to the contrary herein, to the extent there is any conflict between the Plan and the Confirmation Order, on the one hand, and the Asset Purchase Agreement, on the other hand, the Asset Purchase Agreement shall govern solely in the event

the Sale Transaction is consummated. Except as set forth in the Plan, in the event that any provision of the Disclosure Statement, the Plan Supplement, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

#### **I. Plan Supplement**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Claims, Noticing, and Solicitation Agent at <https://cases.stretto.com/Voyager> or the Bankruptcy Court's website at <http://www.nysb.uscourts.gov>. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

#### **J. Non-Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, subject to the Purchaser's consent rights under the Asset Purchase Agreement prior to the Outside Date, shall have the power to alter and interpret such term or provision to make it valid or enforceable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' consent, consistent with the terms set forth herein; and (3) non-severable and mutually dependent.

#### **K. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors, and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties nor individuals or the Wind-Down Debtors will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan or any previous plan.

#### **L. Waiver or Estoppel**

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in

a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed prior to the Confirmation Date.

Dated: January 8<sup>10</sup>, 2023

VOYAGER DIGITAL HOLDINGS, INC.  
on behalf of itself and all other Debtors

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/s/ *Stephen Ehrlich*

Stephen Ehrlich  
Co-Founder and Chief Executive Officer  
Voyager Digital Holdings, Inc.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER (I) AUTHORIZING ENTRY INTO THE  
BINANCE US PURCHASE AGREEMENT AND (II) GRANTING RELATED RELIEF**

Upon the Motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”): (i) authorizing entry into the Binance US Purchase Agreement and (ii) granting related relief; and the Debtors having determined, after an extensive marketing process, that BAM Trading Services Inc. d/b/a Binance.US (“Binance US” or the “Purchaser”) has submitted the highest or otherwise best bid for the Acquired Assets; and the Debtors having selected Binance US as the Winning Bidder pursuant to the Bidding Procedures Order; and upon adequate and sufficient notice of the Motion, all as more fully set forth in the Motion; and upon the First Day Declaration and the Tichenor Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, entered February 1, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

§§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY FOUND AND DETERMINED THAT:

**A.** The Debtors and the Purchaser negotiated the Binance US Purchase Agreement at arm's length and in good faith, without collusion, all within the meaning of section 363(m) of the Bankruptcy Code.

**B.** The agreement to reimburse Purchaser Expenses, as set forth in the Binance US Purchase Agreement, is: (1) commensurate to the real and substantial benefits conferred upon the Debtors' estates by the Purchaser; (2) reasonable and appropriate in light of the size and nature of the proposed sale contemplated by the Binance US Purchase Agreement, the commitments that have been made by the Purchaser, and the efforts that have been and will be expended by the Purchaser; and (3) necessary to induce the Purchaser to continue to pursue such sale and continue to be bound by the Binance US Purchase Agreement. The Purchaser Expenses are an essential inducement to, and condition of, the Purchaser's entry into, and continuing obligations under, the Binance US Purchase Agreement. Unless it is assured that the Purchaser Expenses will be available, the Purchaser is unwilling to be bound to the terms of the Binance US Purchase Agreement (including the obligation to maintain its committed offer in accordance with the terms



of the Binance US Purchase Agreement while such offer is subject to higher or otherwise better bids as contemplated by the Bidding Procedures). The Purchaser has provided a material benefit to the Debtors and their creditors by providing a baseline value, thereby increasing the likelihood that the value of the Acquired Assets will be maximized through the Debtors' sale process.

C. The amount of Purchaser Expenses to be paid shall be subject to the review and approval of this Court for reasonableness, and the Binance.US Purchase Agreement is deemed modified to reflect this term. Accordingly, the Purchaser Expenses are (1) fair, reasonable and appropriate and designed to maximize value for the benefit of the Debtors' estates; and (2) an actual and necessary cost of preserving the Debtors' estates within the meanings of sections 503(b) and 507(a) of the Bankruptcy Code.

IT IS HEREBY ORDERED THAT:

**I. Notice of the Motion.**

1. Notice of the Hearing, the Motion, and the Debtors' entry into the Binance US Purchase Agreement, was timely, proper, and reasonably calculated to provide interested parties with timely and proper notice thereof, and no other or further notice of the Motion and the Hearing is, or shall be, required. The requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice. A reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

**II. Highest or Otherwise Best Offer.**

2. The Debtors' pre- and postpetition marketing process with respect to the Acquired Assets afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Acquired Assets. The transactions contemplated by the Binance US Purchase Agreement constitute the highest or otherwise best offer for the Acquired

Assets, and the Debtors' determination that the terms of the Binance US Purchase Agreement constitute the highest or otherwise best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment; *provided* that nothing in this Order shall limit or otherwise restrict in any way the Seller's rights and obligations under section 5.2 of the Binance US Purchase Agreement. Entry of this Order, including approval of the Seller's entry into, and performance (for the limited purposes approved by this Order) under, the Binance US Purchase Agreement, is in the best interests of the Debtors, their estates, creditors, and all other parties in interest.

### **III. General Provisions.**

3. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to these chapter 11 cases pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

4. All objections to the Motion to authorize the Debtors to enter into the Binance US Purchase Agreement or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Court at the Hearing or by stipulation filed with the Court, and all reservations of rights regarding the Motion, are hereby denied and overruled on the merits with prejudice; *provided* that, notwithstanding anything in this Order or the Binance US Purchase Agreement, the rights of all parties to object to the Plan and final approval of the Disclosure Statement are expressly reserved and preserved.

5. The request by the United States Trustee for the appointment of a Consumer Privacy Ombudsman is denied without prejudice for the reasons stated on the record at the Hearing.

6. The Motion is granted as set forth herein.

7. Voyager Digital, LLC, as seller under the Binance US Purchase Agreement, is authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to enter into the Binance US Purchase Agreement and perform its obligations under the Binance US Purchase Agreement other than those obligations to be performed at or after the consummation of the Sale, which obligations the Debtors will seek approval of in connection with confirmation of a chapter 11 plan. The Seller and Purchaser are granted all rights and remedies provided to them under the Binance US Purchase Agreement.

8. The Binance US Purchase Agreement shall be binding and specifically enforceable against the parties thereto in accordance with its terms, including, without limitation, Section 5.2 (the “No-Shop” provision) and, as applicable, those additional obligations set forth in Article V (Bankruptcy Court Matters) and Article VI (Covenants and Agreements) of the Binance US Purchase Agreement.

9. The Debtors are authorized, but not directed, to enter into non-material amendments to the Binance US Purchase Agreement from time to time as necessary, subject to the terms and conditions set forth in the Binance US Purchase Agreement, and without further order of the Court.

10. The Seller is authorized to satisfy the Purchaser Expenses pursuant to the terms and conditions set forth in the Binance US Purchase Agreement and subject to the review and approval of the Court for reasonableness. The Purchaser Expenses provisions in the Binance US Purchase Agreement and this Order shall be binding on the Seller, its successors and assigns, and shall survive the termination of the Binance US Purchase Agreement, appointment of a chapter 11 trustee or similar fiduciary, and dismissal or conversion of the chapter 11 cases; *provided, however*, that the obligation to pay or honor the Purchaser Expenses shall be subject to the terms and

conditions of the Binance US Purchase Agreement, and the reasonableness of the amount of any Purchaser Expenses paid to Binance US are subject to the Court's review and approval. The Purchaser Expenses shall be entitled to administrative expense status under sections 503(b) and 507(a)(2) of the Bankruptcy Code.

11. The Purchaser is obligated to satisfy the terms and conditions of the Binance US Purchase Agreement in its entirety, including Section 2.2 (Good Faith Deposit), Section 6.21 (Seller Expenses), and Section 8.3 (the Reverse Termination Fee).

12. To the extent the automatic stay provisions of section 362 of the Bankruptcy Code would otherwise apply, such provisions are vacated and modified to the extent necessary to permit the parties to the Binance US Purchase Agreement to exercise their termination rights thereunder in accordance with its terms, and deliver any notice contemplated thereunder, in each case, without further order of the Court.

13. The Debtors are authorized to rebalance their cryptocurrency portfolio subject to the terms of the Binance US Purchase Agreement.

14. Notwithstanding anything to the contrary in this Order or in the Binance US Purchase Agreement, upon the transfer of any cryptocurrency or cash to Binance US, subject to approval of the Binance US Purchase Agreement and in accordance with the terms thereof, Binance US shall have only nominal title to such cryptocurrency or cash, which shall be held solely in a custodial capacity in trust and solely for the benefit of the Seller or the applicable User or Eligible Creditor (each as defined in the Binance US Purchase Agreement). For the avoidance of doubt, beneficial title to such cryptocurrency or cash shall remain with the Debtors, or the applicable User or Eligible Creditor, as applicable.

15. For the avoidance of doubt, notwithstanding anything to the contrary in this Order, this Order does not approve the Binance US Transaction or authorize the Debtors to consummate the Binance US Transaction. Consummation of the transaction is contingent upon the consummation of a plan of reorganization, among other things.

16. Nothing in this Order or the Binance US Purchase Agreement releases, impairs or otherwise precludes: (i) any liability to any governmental unit as defined in 11 U.S.C. § 101(27) (“Governmental Unit”) that is not a “claim” within the meaning section 101(5) of the Bankruptcy Code; (ii) any claim of any Governmental Unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of the closing of the Sale; or (iii) any liability to a Governmental Unit on the part of any Person other than the Debtors. Nor shall anything in this Order or Binance US Purchase Agreement enjoin or otherwise bar a Governmental Unit from asserting or enforcing any liability described in the preceding sentence. Notwithstanding anything to the contrary, nothing in this paragraph 14 shall be construed as a determination as to any liability or claim owing to a Governmental Unit or whether any Governmental Unit is subject to the automatic stay under section 362 of the Bankruptcy Code or limits, lifts or otherwise modifies the automatic stay under section 362 of the Bankruptcy Code.

17. Further, nothing in this Order or the Binance US Purchase Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law. Nothing in this Order or the Binance US Purchase Agreement shall relieve any entity from any otherwise applicable obligation to address or comply with information requests or inquiries from any Governmental Unit. Nothing in this Order or the Binance US Purchase Agreement shall affect

any valid setoff or recoupment rights of any Governmental Unit. Nothing in this Order or the Binance US Purchase Agreement divests any state tribunal of any otherwise applicable jurisdiction it may have under police or regulatory law. Nothing in this Order or the Binance US Purchase Agreement shall be construed as a determination of whether the automatic stay applies to this paragraph 14 or limits, lifts or otherwise modifies the automatic stay under section 362 of the Bankruptcy Code.

18. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

19. Notwithstanding anything to the contrary in this Order or the Binance US Purchase Agreement, no transitional use of Oracle America Inc.'s (including any of its predecessors-in-interest) (collectively, "Oracle") licenses, products or services is authorized to any party by virtue of the Binance US Purchase Agreement approval herein, absent a further agreement between



Oracle, Debtors and the Purchaser, or further order of Court specifically relating to transitional services.

20. Notwithstanding anything in this Order or the Binance US Purchase Agreement, in the event that any party receives a Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases (Asset Purchase Agreement), attached to the order approving the Disclosure Statement as Exhibit 9, after February 1, 2023, such parties shall have 21 days from the mailing of such notice to object to any proposed cure; *provided* that such cure objection, if any, shall not preclude confirmation of the Plan or effectuation of the Binance US Transaction pursuant thereto.

21. The Debtors shall maintain copies of their books and records as set forth in the Plan. Nothing in this Order shall affect the obligations of the Debtors and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

22. Notwithstanding anything to the contrary in the Motion, this Order, or any findings announced at the Hearing, nothing in the Motion, this Order, or announced at the Hearing constitutes a finding under the federal securities laws as to whether crypto tokens or transactions involving crypto tokens are securities, and the right of the United States Securities and Exchange Commission to challenge transactions involving crypto tokens on any basis is expressly reserved.

23. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

24. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

25. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

26. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

27. The failure to specifically include any particular provision of the Binance US Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that entry into the Binance US Purchase Agreement be authorized and approved; *provided* that the consummation of the Binance US Purchase Agreement shall be subject to confirmation of the Plan, and the rights of all parties to object to the Plan are expressly reserved and preserved.

28. The Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Binance US Purchase Agreement, all amendments thereto and any waivers and consents thereunder, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to interpretation, implementation, or enforcement of the Binance US Purchase Agreement, including, but not limited to, any matter, claim, or dispute arising from or relating to the Binance US Purchase Agreement, and any purported termination of the Binance US Purchase Agreement pursuant to paragraph 11 of this Order.

29. To the extent that this Order is inconsistent with the Motion, the terms of this Order shall govern.

Dated: New York, New York  
January 13, 2023

/s/ **Michael E. Wiles**

THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10943-mew

4 - - - - - x

5 In the Matter of:

6

7 VOYAGER DIGITAL HOLDINGS, INC.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 January 10, 2023

17 2:03 PM

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19

20

21 B E F O R E :

22 HON MICHAEL E. WILES

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KB

Page 2

HEARING re Hearing Re: motion authorizing entry into the  
Binance.US purchase agreement, and granting related relief  
Objections filed

HEARING re Motion scheduling a combined disclosure statement  
approval and plan confirmation hearing, conditionally  
approving the adequacy of the Debtors' disclosure statement,  
approving procedures for solicitation, forms of ballots and  
notices, procedures for tabulation of votes and procedures  
for objections, and granting related relief  
Objections filed

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 25 VINCENT SASSO

## I N D E X

1 WITNESSES: DIRECT: CROSS: REDIRECT: RECROSS

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 3 BRIAN TICHENOR 155 23/49/57/63 60

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 9 EXHIBITS: PAGE:

10  
 11 (None marked)

1 DANIEL KERNS  
 2 JONATHAN WHITE  
 3 SIGMUND WISSNER-GROSS  
 4 TINA LAWRENCE  
 5 DAVID O'BRIEN  
 6 LILY YARBOROUGH  
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 14 DANIEL SIMON  
 15 GREGG STEINMAN  
 16 GRAYSON WILLIAMS  
 17 JOSEPH EVANS  
 18 CHARLES GIBBS  
 19 JON WARREN

## P R O C E E D I N G S

1  
 2 THE COURT: Good morning, everybody. Are the  
 3 parties ready to proceed on the Voyager case?

4 MR. SUSSBERG: Yes, Your Honor.

5 THE COURT: Okay, who's going to take the lead for  
 6 the Debtors?

7 MR. SUSSBERG: Your Honor, it's Joshua Sussberg  
 8 from Kirkland and Ellis. Happy, healthy new year to you.

9 THE COURT: Thank you. Happy new year to  
 10 everybody.

11 MR. SUSSBERG: Your Honor, I wanted to take a few  
 12 minutes at the outset to set the stage for the hearing.

13 It's been, by my count, 56 days since we were last before  
 14 Your Honor back on November 15th, and we were quite  
 15 confused, I think I said dismayed, at what had transpired  
 16 through the course of the week prior with the FTX debacle  
 17 and bankruptcy, and we were left at a place where we had  
 18 completed solicitation as it related to the FTX Alameda  
 19 transaction and we needed to figure out quickly how to  
 20 jumpstart the case and re-commence our process.

21 And you know, Your Honor, I'd be remiss not to  
 22 mention that a lot of people have worked incredibly hard  
 23 over the last 56 days, including the Voyager management  
 24 team, the advisor team, Ms. Okike, Ms. Smith, Moelis, the  
 25 Latham representing Binance, and the UCC. And everyone's

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1 worked collaboratively to do right by our customers and that  
2 was what we wanted to do from the very outset of these  
3 cases, Your Honor, and that is what we are trying to do  
4 today.

5 Very briefly, Your Honor, we entered into the  
6 Binance -- transaction with Binance.US, and we'll talk about  
7 that, on December 18th and we are proposing to move forward  
8 swiftly with a combined disclosure statement and  
9 confirmation hearing on March 2nd, the idea being that we do  
10 not want to delay getting money, getting crypto back into  
11 our customers' hands. Importantly, Your Honor, at the same  
12 time that we renewed our marketing process, we also took a  
13 very hard look at a standalone self-liquidation and I think  
14 you'll see from the declarations that were submitted by Mr.  
15 Tichenor as well as the UCC statement in support of both the  
16 entry into the contract as well as the disclosure statement,  
17 the self-liquidation option is not an option that is going  
18 to put the most money in our customers' pockets.

19 And we think that there's a lot of confusion out  
20 in the marketplace and in the media about what this  
21 transaction with Binance actually is, and Ms. Okike is going  
22 to spend time walking through it today, but in effect, it's  
23 a platform play where Binance will have an opportunity to  
24 onboard willing customers from Voyager onto Binance and some  
25 people will ask to get their crypto back, some people will

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1 coordinating with Binance and their respective counsels  
2 including their CFIUS counsel to not only deal with the  
3 inquiry but to voluntarily submit an application to move  
4 this process along.

5 And I say that because, Your Honor, the  
6 alternative to the Binance transaction is a self-  
7 liquidation, and again that's something that collectively  
8 the advisors across the board do not believe is in our  
9 customers' best interest and will in fact result in reduced  
10 recoveries. So we're going to work with CFIUS as well as --  
11 and I'll get to in a second -- the objecting states so that  
12 we can avoid a self-liquidation. Because if the CFIUS  
13 review process and the objecting states prevail on their  
14 objections, the outcome is a self-liquidation and again,  
15 that's in no one's interest and no one should be pushing for  
16 it.

17 As far as the state and federal agencies that  
18 opposed the Binance transaction, again, these are entities  
19 that on their face, are seeking to force a liquidation of  
20 all assets and a result of return of cash to customers. Now  
21 Binance.US itself, Your Honor, has licenses, authorizations,  
22 or exemptions in 46 of the 50 states, and it will allow  
23 Voyager customers to quickly onboard to Binance, that  
24 platform, resulting in access to their pro rata share of  
25 cryptocurrency.

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1 ask to get their cash back, but Binance is paying \$20  
2 million for that opportunity. So as far as the financial  
3 wherewithal to affect this transaction, you know, we think  
4 that argument that has been reiterated by certain States has  
5 no basis in fact or law.

6 The objections that you're going to here today,  
7 Your Honor, really fall into three buckets and I want to  
8 briefly address them at the outset so everybody's aware.  
9 It's a total of approximately six objections at this point,  
10 a few of which have been resolved from a disclosure  
11 standpoint. But the three that I want to focus on are  
12 CFIUS, the objecting states -- there's various states that  
13 have objected -- as well as Alameda and FTX.

14 As far as CFIUS is concerned, and I know Your  
15 Honor is familiar but for those that aren't, this is the  
16 Committee on Foreign Investment in the United States, and to  
17 be clear, this is a committee, an interagency body of the  
18 government, that's empowered to review transactions  
19 involving foreign persons and U.S. businesses so they can  
20 evaluate the impact on U.S. national security.

21 And we recognize that the Binance transaction is  
22 potentially subject to CFIUS review, and in fact, we  
23 received an inquiry even over the holidays from CFIUS  
24 directly indicating that it had questions and it was  
25 planning to potentially review the transaction. We are

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1 The objecting states assert unfair treatment for  
2 customers in various states and we believe it's misguided.  
3 Creditors in unsupported jurisdictions, the four  
4 jurisdictions in question, are going to receive the same  
5 recovery as all otherly situated creditors just in a  
6 different form of currency as a result of the applicable  
7 states' regulations.

8 And the interesting thing here is the states are  
9 effectively speaking out of both sides of their mouth  
10 because the objecting states actually have the authority and  
11 the wherewithal to provide temporary solutions to allow for  
12 distributions of cryptocurrency itself to be made to those  
13 constituents in kind. And so this issue is really one of  
14 the states' own making.

15 Nonetheless, as we always do, the Debtors,  
16 Binance, and the Committee remain committed to continuing to  
17 work with the states. I think we've been able to work  
18 through some of the issues. Some remain for today, but we  
19 will continue to power through that.

20 And finally Your Honor, Alameda and FTX and this  
21 one is frankly a head scratcher. I will say at the outset  
22 that I spoke to Mr. Dietderich this morning, who I've told  
23 the Court I have a lot of respect and admiration for and  
24 consider a friend, and we agreed that we would sit down and  
25 see if there was a way to resolve this on an expedited basis

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1 because again, the two pieces of objection here are a bit  
2 head scratching.

3 You know, number one Alameda is coming into this  
4 Court and arguing that our plan is unfairly treating the  
5 loan that it made to the company at the HoldCo, not at the  
6 operating company. And even on its face, we believe there  
7 is sufficient basis for equitable subordination. I don't  
8 need to belabor the point. I frankly think it's not even a  
9 close call, and equitable subordination is something that's  
10 often bantered but rarely executed upon.

11 We have people that have been federally indicted  
12 for their behavior in what will go down as one of the  
13 largest frauds of all time, and so we'll deal with that in  
14 the context of the plan and I think we've addressed it with  
15 disclosure.

16 The other issue that FTX and Alameda raise is more  
17 complicated and admittedly a large dollar value number, and  
18 this relates to the order that Your Honored entered at  
19 Docket 470 allowing for the repayment of loans that Alameda  
20 made to the Debtors. Alameda and FTX have now argued that  
21 those were preferences and may be entitled to administrative  
22 priority in our cases, this is five to six hundred million  
23 dollars. To be clear, there's been no administrative claim  
24 filed, no preference action has been filed in Delaware, but  
25 we need to figure out a resolution here and we need to

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1 Honor. I'd be speaking out of school. I don't have the  
2 number at my fingertips.

3 THE COURT: Okay.

4 MR. SUSSBERG: But we can run that down. Last but  
5 not least, Your Honor, I just wanted to mention, you know,  
6 our hope is today to move forward and seek approval of the  
7 two agenda items that we will walk through and we will  
8 address the objections. We are looking to quickly get our  
9 disclosure statement out to stakeholders that includes the  
10 Binance transaction. The plan incorporates the sale.

11 It also has a toggle feature in the event that the  
12 CFIUS delay is such that we need to effect the self-  
13 liquidation, which we very much want to avoid, but our goal  
14 is to move this as quickly as we can and get people back  
15 their money. People are tired. People are upset. We read  
16 everything that's out there. We understand it and I want  
17 everybody to appreciate and know that we're going to do  
18 everything in our power to bring these cases to an  
19 appropriate conclusion as quickly as possible.

20 So with that Your Honor, unless you have any  
21 questions, we propose to dive right into the agenda.

22 THE COURT: All right. I have plenty of  
23 questions. Won't surprise you that I've read all the papers  
24 and I have my own series of questions that I'd probably like  
25 to do first and in a particular order, but before we do

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1 figure it out quickly.

2 And we frankly believe we have significant  
3 defenses including setoffs which we'll articulate at the  
4 right time, but to have our customers have five or six  
5 hundred million dollars held up while this Voyager entity  
6 litigates with Alameda after everything that's happened in  
7 these cases seems preposterous to us.

8 And so as I said we will speak to Mr. Dietderich  
9 and we will see if we can come to a commercial resolution  
10 without having to spend and waste money that otherwise  
11 belongs in our customers' pockets.

12 THE COURT: Mr. Sussberg --

13 MR. SUSSBERG: Finally, Your Honor --

14 THE COURT: If I --

15 MR. SUSSBERG: Yes, sir.

16 THE COURT: -- remember correctly, if I remember  
17 correctly that Alameda loan was at least partially secured.  
18 Alameda had posted collateral that was returned to it. Is  
19 that right?

20 MR. SUSSBERG: That is correct, Your Honor.

21 THE COURT: What was the -- what were the values  
22 on the date of the repayment? How much of the loan was  
23 collateralized at that point, based on then current  
24 collateral values?

25 MR. SUSSBERG: I'd have to go check back, Your

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1 that, it may make sense to get the evidentiary record  
2 completed and for you to offer whatever declarations you  
3 wish to offer in evidence and see if there's additional  
4 cross examination that people desire.

5 MR. SUSSBERG: Absolutely. I'm going to turn the  
6 podium over to Ms. Okike.

7 THE COURT: Thank you.

8 MS. OKIKE: Good afternoon, Your Honor. Christie  
9 Okike of Kirkland and Ellis on behalf of the Debtors. Can  
10 you hear me okay.

11 THE COURT: I can, thank you.

12 MS. OKIKE: Your Honor, so as Mr. Sussberg said,  
13 we have two items on today's agenda, the Debtors' motion  
14 seeking authorization to enter into the Binance.US APA and  
15 the Debtors' motion seeking conditional approval of the  
16 disclosure statement.

17 We would propose to proceed with the APA motion  
18 followed by the disclosure statement motion, if Your Honor  
19 is amenable to that.

20 THE COURT: I'm fine with that. Actually some of  
21 the issues overlap, so certainly the questions that I will  
22 be asking will overlap. So I would like to just get the  
23 evidentiary record on both kind of over with and then we can  
24 proceed with the issues.

25 MS. OKIKE: Understood, Your Honor. So we filed

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1 the declaration of Mr. Brian Tichenor, managing director at  
2 Moelis, the investment banker to the Debtors, in support of  
3 the APA motion at Docket No. 836 and we would request that  
4 that declaration be admitted into evidence. Mr. Tichenor is  
5 on the line if any party wishes to cross examine him.

6 THE COURT: All right. Does any party object to  
7 the admission of Mr. Tichenor's declaration into evidence?

8 Very good. Mr. Tichenor, will you verify that the  
9 statements made in your declarations are true and correct to  
10 the best of your knowledge, information, and belief, and  
11 that you will so testify if called under oath?

12 MR. TICHENOR: I would, Your Honor.

13 THE COURT: All right. And does anybody wish to  
14 cross examine Mr. Tichenor? All right. I haven't heard  
15 anything --

16 MS. CORDRY: Your Honor, this is --

17 THE COURT: Go ahead.

18 MS. CORDRY: This is Karen Cordry. Can you hear  
19 me?

20 THE COURT: I can now, yes.

21 MS. CORDRY: Okay. Yes, I'm sorry. We did have  
22 some questions. I'm representing a number of states and we  
23 did have some questions to try to clarify some of the  
24 aspects of what was being proposed here. So would this be  
25 the time you would want us to ask those questions?

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1 connection with the rebalancing transaction.

2 Q And when do you intend to start that?

3 A We would intend to start that likely at the beginning  
4 of February. In connection with the rebalancing  
5 transaction, we do plan to confer with the UCC and as we  
6 mentioned, there is still additional work being done in  
7 advance of that transaction to make sure that it is being  
8 executed in an appropriate manner.

9 Q Okay. And what is the overall estimated cost of that  
10 process?

11 A We estimate that -- the cost of that process to be  
12 potentially in, I believe, approximately \$30 million which  
13 my recollection is largely relates to slippage associated  
14 with ultimately the value recovered on those coins relative  
15 to the value associated with them today.

16 Q Okay. And who is bearing that cost?

17 A Ultimately that cost would be born through recovery  
18 value for the underlying creditors.

19 Q So that is not something that Binance is paying in any  
20 respect, that's coming out of the Voyager funds?

21 A Yes. The slippage relates to, effectively to the  
22 extent that you are selling illiquid tokens, for example,  
23 the price impact that those sales or transactions could  
24 ultimately have on the price of the token itself.

25 Q Okay. Now all of this process is going through an

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1 THE COURT: It depends on whether Mr. Tichenor is  
2 the right witness for some of those questions, but why don't  
3 you try.

4 MS. CORDRY: Okay. So they are going through  
5 pretty much what was put in his declaration.

6 CROSS EXAMINATION OF BRIAN TICHENOR

7 BY MS. CORDRY:

8 Q Mr. Tichenor, my first question would be -- and as I  
9 say, some of these are just to clarify because we have not  
10 had a chance to sit down and go over these documents with  
11 you outside of this hearing process. So first question  
12 would be, this rebalancing transaction that the company is  
13 proposing that is separate from the plan, that would be done  
14 under any version of the kind of proposals that -- to  
15 resolve this case; is that correct?

16 A That is correct.

17 Q Okay. And that could be done now. That does not  
18 require waiting for the confirmation process or anything  
19 like that; is that also correct?

20 A That is my understanding.

21 Q Okay. How long do you estimate that process will take?

22 A We estimate that that process would likely take in the  
23 range of approximately one month. That being said, there is  
24 still work being done and performed around ultimately what  
25 the series of transactions would ultimately look like in

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1 account, as I understand it from your documents, that  
2 Voyager is going to establish under its own name on the  
3 Binance platform; is that correct?

4 A So those transactions may occur through Binance but  
5 under the APA they do not have to occur through Binance. As  
6 proposed, the Debtor is working through ultimately what  
7 those transactions could look like and they could involve  
8 transactions that the Debtor executes on other third party  
9 exchanges, for example, even away from Binance directly  
10 itself.

11 MAN 1: This is what I sent to Melanie.

12 WOMAN 1: Right, because I already sent them to  
13 her.

14 MS. CORDRY: We're getting somebody else on the  
15 line.

16 THE COURT: Excuse me. Excuse me. Everybody  
17 who's not actively participating, please mute your line.

18 BY MS. CORDRY:

19 Q Okay, so just, the end you were saying it may go  
20 through on Binance, but you have the option of also using  
21 other platforms, doing it yourself directly; is that  
22 correct?

23 A That is correct. So for example, prior to filing, the  
24 company had relationships with a number of market makers  
25 that it used for purposes of being able to execute

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1 transactions for customers through its exchange itself and  
2 transactions could be executed by the company directly, for  
3 example, under a similar structure.

4 Q Okay. And at the end of this process, this rebalanced  
5 set of coins, they will all still be held on Voyager's own  
6 platform; is that correct?

7 A I believe that is correct, yes.

8 Q Okay. Let's see. All right. So your Paragraph 20 of  
9 your affidavit says that the Debtors will maintain control  
10 of all of their crypto including during rebalancing until  
11 "the transfer of cryptocurrency to Binance." So how does  
12 that particular statement relate to the question of delayed  
13 acquired coins? Are those coins again continuing to be held  
14 on Voyager's platform until there is an account set up at  
15 Binance that they could be transferred to for a particular  
16 customer? Again, is that correct as our understanding?

17 A So that is correct. It's my understanding that the  
18 nature of the transaction would be that only after a  
19 customer has opened an account at Binance.US and gone  
20 through an AML and KYC process, after that process has  
21 occurred and only after that process has occurred, would the  
22 coins be transferred to Binance.

23 Q Okay. On another topic, I note in Paragraph 3.3 of the  
24 purchase agreement, it refers to a Schedule 3.3(a) that  
25 spells out all of the governmental authorizations, consents,

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1 legal conclusion.

2 THE COURT: All right, I agree with that.  
3 Objection sustained.

4 MS. CORDRY: All right. Well, I may come back to  
5 his affidavit at the end, but let me go on because I think  
6 his affidavit, I believe, made statements along that line.

7 BY MS. CORDRY:

8 Q Yeah, because Paragraph 22 of your affidavit talks  
9 about, it's my understanding that Section 6.12 of the  
10 purchase agreement provides that the seller and each  
11 transferred creditor will retain all right, title, and  
12 interest to the cryptocurrency allocated to it in accordance  
13 with the purchase agreement and so on and so forth.

14 So it was my basis for asking about that is that there  
15 is language about that in his affidavit. I was trying to  
16 get a clearer sense as to in that affidavit when -- who  
17 owned what under -- what he's saying there, who owned what  
18 at what time and when would those matters change over the  
19 course of this process?

20 A So I believe the section that you're referring to would  
21 relate to ownership interests and title and custody relating  
22 to the coins prior to a transfer to Binance US. The section  
23 of that statement related to my understanding of the way in  
24 which the coins would be custodied by Voyager as the  
25 organization prior to the transfer of such coin to

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1 et cetera that have to be given for this transaction. With  
2 all of these documents, I had trouble. I couldn't find that  
3 particular schedule. Is it attached to one document or  
4 another to look at?

5 A I don't know. I would have to defer to counsel.

6 Q Okay. And do you view approval of the purchase  
7 agreement or entering into the purchase agreement as  
8 actually being a determination that that schedule is in fact  
9 correctly reflects all governmental approvals,  
10 authorizations, and consents and so forth?

11 A I don't know the answer to that. Our basis for review  
12 was based on our understanding of Binance's MTL and  
13 regulatory licensing stature.

14 Q Do you view that statement in the purchase agreement as  
15 being binding on the governmental entities?

16 A I am not an expert on that.

17 Q As of the current moment, who owns coins held by  
18 customers on Voyager's platform? Does the customer have  
19 ownership of those coins?

20 A My understanding is --

21 MR. SLADE: Your Honor -- I apologize Your Honor.  
22 This is Mike Slade for the Debtors. I object. That (audio  
23 drops) the witness for a legal conclusion.

24 THE COURT: I'm sorry, what was the objection?

25 MR. SLADE: That is asked the witness to offer a

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1 Binance.US for purposes of being distributed to account  
2 holders.

3 Q Right. And then the last sentence, "It is my  
4 understanding that under the purchase agreement the  
5 cryptocurrency will be held by Binance.US solely for the  
6 benefit of the seller or transferred creditors applicable  
7 until the distributions are made." So first question, until  
8 such distributions are made, are those distributions when a  
9 creditor would be taking their funds out of the Binance  
10 platform? Is that what that's referring to?

11 A I -- that would refer to when the crypto is being  
12 deposited into the underlying account of such creditor on  
13 the Binance.US platform.

14 Q Okay. Then at that point it would still be it would be  
15 -- it would be held by Binance for the benefit then of that  
16 transferred creditor, so the transferred creditor would have  
17 -- those would be the transferred creditor's funds when  
18 they're on the Binance platform? Again, is that your  
19 understanding?

20 A That is my understanding, yes.

21 Q Okay. Okay. Let's see. And I think you had a  
22 discussion, a considerable discussion in your declaration  
23 why having Voyager carry out its own distribution of the  
24 coins, I guess this self-liquidation process you were  
25 talking about, would be more difficult and costly than

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1 having Binance do it. Is that the basis for the asserted  
2 difference between the projected 51 percent recovery through  
3 the Binance plan versus the 45 percent projected for a do-  
4 it-yourself payment plan?

5 A Yes, that's correct.

6 Q Okay. There is a lot in your declaration and the  
7 Creditors Committee declaration that is not in the  
8 disclosure statement, and does help to explain that. I  
9 mean, my reading of those documents initially was that they  
10 were quite conclusory and didn't really explain why there  
11 was a difference there. Is there a willingness to add some  
12 more of that into the disclosure statement so people would  
13 actually understand it?

14 MR. SLADE: Your Honor, I would object. That's a  
15 not appropriate question for this witness about whether  
16 we're willing to add stuff to the disclosure statement.

17 THE COURT: I think that's right. You can raise  
18 your question with counsel, but --

19 MS. CORDRY: All right.

20 THE COURT: -- question for the witness.

21 MS. CORDRY: That's fine. That's fine. Let's  
22 see.

23 BY MS. CORDRY:

24 Q For the unsupported jurisdiction states, the proposal  
25 is for Voyager to continue to retain custody of these

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1 A Yes, I believe that's correct, that they would seek to  
2 try to get a relationship with that customer in the six  
3 months preceding closing, and that they would like the --  
4 they are seeking the option to be able to have the right to  
5 be able to get that relationship with such customers.

6 Q Okay. And that is purely based on whether or not they  
7 can get approval from the states for a license to deal with  
8 those customers; is that correct?

9 A I'm not an expert in regulatory matters around  
10 ultimately what would or would not preclude Binance from  
11 being able to get a relationship with those customers, but  
12 that is my understanding.

13 Q Okay. There's no functional reason why those customers  
14 could not be allowed to transfer out if they wished, in  
15 terms of the way this deal is structured. This is purely a  
16 matter of working with Binance's desire to keep them  
17 available for the six-month period, correct?

18 A I apologize. I may not understand the full nature of  
19 the question.

20 Q Question is, in terms of the function of the platform  
21 and what you would eventually do with these customers if the  
22 six months passes and so forth, there's no reason it  
23 functionally needs to be six months. That is a function of  
24 what Binance would like to have in terms of keeping these  
25 customers available?

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1 accounts. This would again stay on its own platform, is  
2 that correct, during the six month period?

3 A That is my understanding, yes.

4 Q Okay. Is there any explicit reason why those accounts  
5 need to be held for six months before anything is done with  
6 them as opposed to allowing some process by which customers  
7 could withdraw the funds either in cash or by in-kind  
8 distributions or whatever process is worked out; is there  
9 any reason for the six-month holding period?

10 A We negotiated this provision with Binance.US in  
11 connection with the underlying transaction. Our  
12 understanding of the nature of their transaction is largely  
13 around the ability to acquire the value and ability to  
14 acquire customers under their structure.

15 This was an important provision from their perspective  
16 relating to such ability to either at closing or at a point  
17 in time in the future, the ability to acquire the  
18 relationship with those customers. As we evaluated the  
19 transaction in a holistic basis, we believe that the  
20 transaction is in the best interest of the estate itself  
21 under that basis.

22 Q So essentially, they're paying more in order to be able  
23 to hold on to these customers and hope that they will  
24 eventually get license approval so they could acquire them;  
25 is that correct?

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1 A The six months was negotiated based on the transaction  
2 and that was what was ultimately agreed to, and was an  
3 important provision from Binance's perspective with regards  
4 to the, you know, broader transaction itself. You know, as  
5 Voyager would operate, they would maintain custody of that  
6 crypto during the six-month period up until the point where  
7 Binance may have an ability to onboard those customers.

8 Q Okay, but again, my question was that that is a matter  
9 of Binance's desire to be able to onboard those customers.  
10 It's not a -- there's nothing in the nature of those  
11 customers that preclude them from being given the option to  
12 leave earlier than six months except for the fact that  
13 you've negotiated this particular arrangement with Binance,  
14 correct?

15 A Well -- and I think the the line of my question was, I  
16 guess, is the line of questions relating to whether or not  
17 those customers would be able to receive in-kind  
18 distributions, for example, through Voyager or relating to  
19 something else?

20 Q It's simply saying that there's no reason that they  
21 have to -- that whatever treatment they are accorded,  
22 there's no reason it has to wait for six months. That is a  
23 function of something you've agreed to with Binance,  
24 correct?

25 A Correct.

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1 Q Okay. And customers in these supported jurisdictions  
2 would have the option of once they put their money into a  
3 Binance account, they could withdraw it immediately, the day  
4 after they have it in the account if they wish, correct?  
5 A Upon the funds being available in their account, they  
6 would be able to withdraw immediately, correct.  
7 Q Okay. So that is a distinction between the supported  
8 versus the unsupported jurisdictions, is how soon the people  
9 could have an ability to withdraw the funds and do something  
10 else with them if they choose?  
11 A That is correct.  
12 Q Okay. Roughly how many customers are in the  
13 unsupported jurisdictions?  
14 A My understanding is it's approximately 120,000  
15 customers.  
16 Q Okay. And do you know what the rough total of the  
17 funds are that those customers hold?  
18 A I believe it's approximately 10 percent.  
19 Q Okay. And what -- and it's 120,000 customers, is that  
20 10 percent of your overall customer base or something more  
21 or less than that? What percentage --  
22 A That's correct. Voyager has approximately 1.2 million  
23 funded customers.  
24 Q Okay. Okay. Let's see. What are the circumstances  
25 under which Voyager would receive the extra \$15 million of

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1 still to start in the future?  
2 A I view that time period as having started.  
3 Q Okay. And do you know what date then you're treating  
4 that as running from, what the signature date was for the  
5 purchase agreement?  
6 A It would have been towards the end of December. I  
7 don't recall the specific date off the top of my head.  
8 Q Okay, so even if it was towards the end of December,  
9 that would be then towards the end of March before this  
10 would kick in, so if the confirmation date goes through in  
11 early March as you're hoping, these expenses would not come  
12 into play; would that be correct?  
13 A That would be correct.  
14 Q Okay.  
15 A So to the extent there was an expeditious closing to a  
16 transaction, the expense reimbursements would likely not  
17 occur.  
18 Q Okay. So those are a contingency at this point. The  
19 only for sure you're getting out of this deal is \$20 million  
20 dollars coming from Binance at this point?  
21 A That's correct.  
22 Q Okay. Let's see. Where does Binance maintain its  
23 records with respect to its cryptocurrency operations?  
24 A I'm not sure I understand the nature of the question.  
25 Is --

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1 seller expenses under the purchase agreement?  
2 A There are certain provisions relating to expense  
3 reimbursement, relating to scenarios in which closing occurs  
4 beyond an agreed -- mutually agreed upon date. In the first  
5 instance, an expense reimbursement would be up to \$10  
6 million which would primarily relate to expense  
7 reimbursement for months three to four, effectively in the  
8 first instance, upon -- from signing of the APA. There is  
9 an option that at the discretion of Binance they could  
10 exercise to extend the outside date an additional month  
11 which would include an additional incremental, up to \$5  
12 million of additional expense reimbursement.  
13 Q So do you view this, the purchase agreement, as being  
14 signed now, is that time running now or is this -- is the  
15 time going to start at some future point after the Court  
16 approves this purchase agreement or entering into this  
17 purchase agreement, what you're trying to do right now?  
18 A My recollection of the APA is that it begins at signing  
19 of the APA. There are additional extensions embedded in it  
20 relating to delays from a Court perspective for example. I  
21 don't recall the specifics around those extensions at this  
22 time, no.  
23 Q Well actually what my question is, has that date -- do  
24 you view the purchase agreement as having been signed and  
25 entered into now? Is that time period running or is that

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1 Q Geographically --  
2 A -- elaborate?  
3 Q -- where. Geographically, where does it maintain its  
4 records with respect to these, to its cryptocurrency  
5 accounts that it maintains?  
6 MR. SLADE: Your Honor, can I -- objection to the  
7 relevance of that question.  
8 THE COURT: Overruled.  
9 MS. CORDRY: I think it goes to the question  
10 (audio drops) have about the suitability of Binance and  
11 issues with respect to its operation.  
12 THE COURT: I've overruled the objection. The  
13 witness can answer.  
14 BY MS. CORDRY:  
15 Q Sorry.  
16 A My understanding is that the company is headquartered  
17 in Palo Alto, California. I can't speak to any physical  
18 records where they maintain. I am aware that Binance.US  
19 maintains wallet infrastructure operations that are hosted  
20 on AWS servers in Virginia and Tokyo, to the extent that's  
21 the nature of the question.  
22 Q Yes, that was. Okay. Can you distinguish which  
23 records are held where?  
24 A I don't recall specifically the variants. My  
25 recollection was the majority of those operations are in

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1 Virginia.

2 Q And do you know if it plans to maintain those separate  
3 record locations or to consolidate them?

4 A I don't recall.

5 MS. CORDRY: Okay. All right. I think that's all  
6 the questions that I have at this point.

7 THE COURT: Thank you. Is there anybody else who  
8 wishes to cross examine Mr. Tichenor?

9 MR. AZMAN: Your Honor, it's Darren Azman from  
10 McDermott, Will, and Emery for the Committee. We'd like to  
11 ask Mr. Tichenor some questions, but it's in the form of a  
12 redirect. I don't know if you'd prefer that we go now and  
13 do a cross or just wait for the redirect from the Debtors  
14 and then we can go after that.

15 THE COURT: Actually, I have some questions I'd  
16 like to ask Mr. Tichenor. Let me do that and then I'll give  
17 both you and the Debtors your chance to redirect, okay?

18 MR. AZMAN: Thank you, Your Honor.

19 THE COURT: Mr. Tichenor, the testimony you just  
20 gave in response to questions about whether the six month  
21 delay is just to accommodate Binance's desire to maybe be  
22 able to establish accounts with those customers, I need to  
23 make sure that I understand because it didn't seem to me  
24 that that's what you were saying in your declaration. So  
25 let me put it this way.

1 THE WITNESS: That is correct, Your Honor, and  
2 that is one of the large complications associated with such  
3 a transaction. As it stands today, the Debtor has  
4 infrastructure in place for regular way operations that  
5 facilitate a customer entering a wallet address that crypto  
6 could be transferred to. There are automated procedures on  
7 the back end that do things like know your transaction  
8 verification relating to the nature of that account and  
9 wallet that that crypto is ultimately being transferred to.

10 To the extent that the Debtor were to enter into  
11 the transaction with Binance, that infrastructure would no  
12 longer be in place and would require an extensive manual  
13 process to be able to actually appropriately transfer crypto  
14 to those wallets based on information that individuals would  
15 send to the Debtor for such transfers.

16 THE COURT: And if a customer in one of the  
17 unsupported jurisdictions just wanted to skip distribution  
18 through Binance and just receive cryptocurrency into an  
19 account that they would designate for you at Coinbase or I  
20 don't know, whoever else is out there, would the customer  
21 have the right to do that, and if not why not?

22 THE WITNESS: So the customer would not have the  
23 right to do that and transfer to, for example, Binance in  
24 that instance would not be different than a transfer to any  
25 other wallet, Your Honor. It's the nature of the transfers,

1 If we do this sale transaction, will the Debtors  
2 have any ability to transfer cryptocurrencies directly to  
3 customers in the unsupported jurisdictions?

4 THE WITNESS: To the extent that the Debtor were  
5 to move forward with the Binance.US transaction, given the  
6 fact that the underlying platform itself would be  
7 transferred to Binance and the nature of the remaining  
8 operations on a go forward basis, my understanding is that  
9 due to technical and other feasibility issues associated  
10 with the direct transfer of cryptocurrencies from the  
11 remaining business to account holders directly would be an  
12 excessive burden on and the Debtor and for context, Your  
13 Honor, of the approximately 120,000 customers, on average, a  
14 Voyager user has approximately three tokens in their  
15 account.

16 And so to the extent that the Debtor were required  
17 to transfer cryptocurrency in kind to customers in those  
18 unsupported jurisdictions, it would require approximately  
19 360,000 individual trades, which would also require AML and  
20 KYC in connection with those transfers that on a go-forward  
21 basis the Debtor would not have the infrastructure to be  
22 able to appropriately support.

23 THE COURT: And every one of those customers would  
24 have to have a wallet somewhere for the Debtor to make the  
25 transfer to; is that correct?

1 of the number of transactions that would ultimately need to  
2 occur, and the ability to verify individually and manually  
3 those transfers and the nature of the remaining operations  
4 that also the Debtor would need to maintain in order to  
5 facilitate such transactions.

6 THE COURT: So under the transaction, the only way  
7 any customer can receive cryptocurrency is by -- is through  
8 a Binance account, even if they make a withdrawal from that  
9 account and customers --

10 THE WITNESS: That's correct, Your Honor.

11 THE COURT: And unsupported -- customers in  
12 unsupported jurisdictions have to wait until Binance can --  
13 has the authority to establish such an account; is that  
14 right?

15 THE WITNESS: To the extent that a customer in an  
16 unsupported jurisdiction would seek to receive an in-kind  
17 distribution, that's correct, Your Honor. The only way in  
18 which that could occur would be through that customer having  
19 the ability to open a Binance.US account.

20 THE COURT: All right. And you've stated in your  
21 declaration that you did financial and business counter  
22 party due diligence of Binance. Would you -- that's pretty  
23 conclusory, I think. Could you describe more specifically  
24 what -- how thorough an investigation you did, what  
25 information you were able to obtain, and what you found in

your investigation?

THE WITNESS: Yes, Your Honor. So the nature of our review was customary and consistent with the nature of diligence that investment bank would perform in connection with evaluating a counterparty for purposes of their financial wherewithal, for example, that included, for example, a review of their audited 2020 and 2021 financial statements. We did also review their interim financial statements on a year-to-date basis through September 30 of this year.

In addition to that financial review around the nature of their ability to be able to close the transaction and have available liquidity to be able to facilitate closing, we did do reviews of additional operational elements of the business, including for example, the nature of their wallet infrastructure and a review of related party agreements that they had with Binance.com, a review of their governance structure.

We reviewed AML and KYC procedures and manuals. We reviewed a business plan that had been provided to state regulators, and I would note, Your Honor, we do continue to do due diligence on Binance.US. We don't view this as a static, historical review of Binance.US. We do view it as an ongoing review and we do, in addition to that, continue to review public sources of information that are available

reasons, Your Honor.

THE COURT: I understand that, but what -- is the Binance.US entity a guarantor of the obligations of any of the other finance companies?

THE WITNESS: Not that I'm aware of, Your Honor, but I don't know.

THE COURT: How would you characterize your level of confidence as to the financial stability of Binance?

THE WITNESS: Based on our review of their financial statements, we believe that they would have ample liquidity to be able to close the transaction and continue to operate their business based on information that was given to us around their historical P&L.

For quite a period of time, even to the extent that there was a view that there was a "run on the bank," given the nature of the way that they hold customer funds which are held on a one-on-one basis, which has been the primary driver for the majority of situations that we are seeing in the crypto space which results in runs on the banks, so they -- as a result of not rehypothecating or lending assets and acting as a custodian, even to the extent that 100 percent of customers withdrew, they would still continue to operate a trading platform and would be able to facilitate withdrawals for such customers.

THE COURT: Okay. You -- in that regard,

on the Debtor including analyzing information relating to public wallets, blockchain wallets that they have, which allow us to analyze things like fund flows and the total amount of assets that are being held on their platform itself.

THE COURT: All right. In terms of the audited financial statements, are those publicly available?

THE WITNESS: Not that I'm aware of, Your Honor.

THE COURT: They're not filed with any regulators to your knowledge, publicly available basis?

THE WITNESS: I believe their financial statements have been provided to state regulators, but on a confidential basis. I don't believe that their financial statements are publicly available, Your Honor. That's my understanding.

THE COURT: And tell me what you concluded as to the financial position of Binance from looking at its financial statement? Is it -- how well capitalized is it? What's the net equity?

THE WITNESS: We view it as adequately capitalized in order to be able to close the transaction and that they have multiples of available liquidity and capital and equity available to be able to close the transaction, without stating a specific number. We do know the number, but we don't feel comfortable sharing it for confidentiality

obviously this case and other cases have highlighted the issue of just what rights customers have with respect to cryptocurrencies. Are they the general unsecured creditors? Is there rehypothecation? Is the exchange just a custodian? And if so, how is it effectuating that role?

What have you found in terms of your investigation of Binance as to what the Binance relationship is with customers and would be as to the Voyager customers? Would that be a custody relationship or a different kind of relationship?

THE WITNESS: I can speak to what I understand from a business perspective, which is that our understanding is that they act as a custodian for customers. They do not view themselves as having, for example, title or ownership of customer crypto itself.

THE COURT: And how is that custodial relationship effected in -- through the wallet infrastructure that you said you investigated? How is that done? Do they --

THE WITNESS: Yes, Your Honor --

THE COURT: -- the customer assets?

THE WITNESS: I apologize, Your Honor. I missed the last part of that question.

THE COURT: Do they segregate all the customer holdings from other holdings?

THE WITNESS: That's my understanding, Your Honor.

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1 THE COURT: Okay. And what else did you learn in  
2 your due diligence about the wallet infrastructure at  
3 Binance?

4 THE WITNESS: Our understanding of their wallet  
5 infrastructure is that they use hot and cold wallets,  
6 whereby for example, parties are able to when they deposit  
7 funds onto the platform, those funds are deposited into hot  
8 wallets. They use then customary and industry standards  
9 relating to the transfer and storage of those assets into  
10 cold storage. Our understanding is that they use a TSS  
11 multi-sig approach for purposes of maintaining private keys,  
12 for example, relating to cold storage of those wallets.

13 You know, we view that and understand that to be a  
14 industry leading standard and based on our review of the  
15 financial statements and information that was provided to  
16 us, we do understand that they view those customer assets as  
17 being assets of the customers themselves directly.

18 THE COURT: And is that reflected in the Binance  
19 terms of use, to your knowledge?

20 THE WITNESS: That would be a legal determination,  
21 but my understanding is based on discussions with our  
22 counsel, that that's correct.

23 THE COURT: Can I just ask if the Binance -- is  
24 this a good time, if the Binance counsel is on the phone,  
25 would you verify that that's how it works at Binance?

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1 perspective.

2 THE COURT: And the cryptocurrency that's held in  
3 segregated wallets for customers, is that all held with  
4 Binance.US as the nominal owner?

5 THE WITNESS: Yes, based on the information that  
6 was provided to us, Your Honor.

7 THE COURT: But the understanding is I -- as you  
8 said, is that it's in a kind of trust custody relationship  
9 that it's a nominal owner but that the beneficial ownership  
10 belongs directly to the customers, right?

11 THE WITNESS: That's my understanding, Your Honor.

12 THE COURT: And is any of the segregated customer  
13 cryptocurrency subject to the control or access of any of  
14 the other Binance companies? Do they have access to the  
15 keys and they -- do they have any ability to transfer,  
16 anything of the kind?

17 THE WITNESS: I am not aware, Your Honor of an  
18 ability for a Binance.com employee to be able to transfer  
19 cryptocurrency outside of the platform.

20 THE COURT: Thank you very much. Do the Debtors  
21 and the Committee have further questions they wish to ask of  
22 (audio drops)?

23 MR. SLADE: Not for the Debtors, Your Honor. You  
24 asked all of my questions.

25 MS. RYAN: Your Honor, this is Abigail Ryan with

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1 MR. GOLDBERG: Your Honor, this is Adam Goldberg  
2 of Latham & Watkins on behalf of Binance.US. Yes, Your  
3 Honor. That's our understanding of how Binance terms of  
4 service operate.

5 THE COURT: Okay.

6 THE WITNESS: I would also note, Your Honor, in  
7 the APA itself, we also, you know, expressly included  
8 provisions to make sure even above and beyond those terms of  
9 service, that up until such customer has transferred the  
10 crypto, that we expressly call out custody and title of  
11 those cryptocurrencies.

12 THE COURT: I have some questions, further  
13 questions about that that are probably for the lawyers, not  
14 for you as the witness, though. You testified that you also  
15 asked or investigated the related party agreements and  
16 transactions. What particularly did you look at and what  
17 did you learn?

18 THE WITNESS: So Your Honor, our focus was on the  
19 relationship that Binance.US has with Binance.com. Our  
20 understanding is that there are certain services agreements  
21 from a perpetual basis that they have in place with  
22 Binance.com. We do also understand there to be common  
23 ownership interests through a common owner being CZ, but  
24 believe the business is based on the information that was  
25 provided to us to be separated from an operating

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1 the Office of the Texas Attorney General, and when the time  
2 is appropriate, I have a few questions for the witness.

3 MS. ROOD: Yeah, Jennifer Rood, Vermont Department  
4 of Financial Regulation. I also have one or two questions.

5 THE COURT: All right. On behalf of Texas, go  
6 ahead.

7 MS. RYAN: Thank you, Your Honor.

8 CROSS EXAMINATION OF BRIAN TICHENOR

9 BY MS. RYAN:

10 Q Good afternoon, and I just have a few follow-up  
11 questions. So help me understand. Right now, does Voyager  
12 have access to all the wallet addresses?

13 A To its own wallet addresses?

14 Q Correct.

15 A My understanding is that Voyager has access to all of  
16 its cryptocurrency, yes.

17 Q And right now, does Voyager have an operational  
18 platform?

19 A I don't believe the -- their platform is operational as  
20 it stands today to be able to, for example, allow for the  
21 withdrawal of cryptocurrency to customers.

22 Q Okay. So in the APA or in the disclosure statement in  
23 APA, if the APA is terminated, it said that account holders  
24 would have 30 days to withdraw their coin from Voyager  
25 platforms. Would that be available now?

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1 A As it stands today, there are certain, for example  
 2 third-party contracts that the company would need to have in  
 3 place in order to be able to facilitate the withdrawal of  
 4 crypto from the Voyager platform. So operationally, the  
 5 company is not able to facilitate the withdrawal of crypto  
 6 as it stands today to customers. As part of the work  
 7 leading into any Binance transaction, to the extent the  
 8 company were to go to a toggle transaction, the work leading  
 9 up to any closing would ultimately also involve, you know,  
 10 similar work around potentially restarting certain of those  
 11 operations to the extent that the Debtor are needed to pivot  
 12 to a toggle. So kind of restarting contracts for example,  
 13 to allow for the withdrawal of crypto.

14 THE COURT: Let me just --

15 BY MS. RYAN:

16 Q Did any of --

17 THE COURT: Let me interrupt to make a legal  
 18 point. The practical ability to distribute to customers at  
 19 the moment is separate from the legal issue. Voyager is not  
 20 permitted to make distributions to its creditors except  
 21 pursuant to a confirmed plan. So right now, a customer  
 22 can't take crypto from Voyager. We've had prior hearings  
 23 where Voyager has said and I believe the Committee has  
 24 agreed and nobody's pointed to any reasons to the contrary  
 25 for me that essentially the customers of Voyager at least

1 for 1.2 million customers.

2 Q Okay. So just help me understand. If the APA is  
 3 terminated, account -- that will all go back into place and  
 4 account holders will have 30 days to withdraw their coin or  
 5 cash it out from the Voyager platform, right?

6 A That's correct. Under the toggle, the plan would be to  
 7 have a 30-day period that would allow customers to be able  
 8 to withdrawal crypto. That's correct.

9 Q So let's talk about that a little more. If under the  
 10 current plan, a customer who's in a consenting jurisdiction  
 11 has their coins (audio drops) Binance but they don't want to  
 12 stay with Binance, they want to cash out, they have three  
 13 months to do so, right?

14 A Under the existing structure a customer, to the extent  
 15 that they were transferred to Binance, would have their  
 16 account at Binance. At that point in time, they could do as  
 17 they see fit with their crypto whether that's maintaining it  
 18 at Binance.US, whether that's selling it and converting it  
 19 into cash, or moving to another third-party wallet address  
 20 at their discretion.

21 Q Okay. So --

22 A -- limited to three months.

23 Q Okay. So for the unconsenting jurisdiction customers,  
 24 when will their coins be valued? Will it be at the same  
 25 time as everyone else's, if it has to be sold, or will it be

1 don't have direct ownership rights to their crypto. They  
 2 are general unsecured creditors of Voyager. So they can  
 3 only get crypto if a plan is confirmed and if the plan  
 4 provides for distributions of crypto and satisfaction of  
 5 claims.

6 MS. RYAN: Thank you, Your Honor. That is a very,  
 7 very good point and absolutely a plan would have to be  
 8 confirmed allowing any distribution of crypto. I completely  
 9 agree with that.

10 BY MS. RYAN:

11 Q So to transfer the coin to Binance, will any of these  
 12 third-party agreements need to be put back into place?

13 A Certain third-party agreements may need to be put in  
 14 place. A number of the agreements in particular that relate  
 15 to the return of cryptocurrency for individual customers  
 16 largely relate to in some ways AML and KYC procedures that  
 17 the company would need to have in order to be able to  
 18 effectuate transactions for individual customers to specific  
 19 wallet addresses. In particular, know your transaction  
 20 customer reviews for example relate to making sure that  
 21 crypto is not transferred to, for example, OFAC banned  
 22 wallet addresses the ability to do transactions to a single  
 23 party, for example, with a known white-listed wallet, make  
 24 that process much easier from an operational perspective  
 25 relative to trying to facilitate those types of transactions

1 at the end of that six months?

2 A Under the plan, the way that we view the distribution  
 3 from a business perspective as working as -- at the time of  
 4 the determination of the rebalancing date that those  
 5 customers are receiving their distribution in kind, and so  
 6 you know, customers would then ultimately be liquidated into  
 7 cash to the extent that it was at the end of the six month  
 8 period, with those proceeds being distributed accordingly.  
 9 But it would be no different than a customer that chose to  
 10 migrate over a three-month period, for example, to receive  
 11 an in-kind distribution.

12 Q So is your answer that for the nonconsenting  
 13 jurisdictions, the price of their crypto would be valued at  
 14 the end of the six months?

15 A My understanding is that the price, the value of their  
 16 crypto would be valued at the end of the rebalancing period,  
 17 similar to all other customers, that they would have  
 18 received the distribution in kind effectively at closing of  
 19 the transaction.

20 Q Okay. So in reading Exhibit C to the disclosure  
 21 statement, it actually says, and I'll read it to you, "If  
 22 Binance.US is unable to make distributions to account  
 23 holders in unsupported jurisdictions at the conclusion of  
 24 the six-month period, the account holders in such  
 25 unsupported jurisdiction will have their in-kind currency

distribution converted to U.S. dollars at the then prevailing market prices and then they'll be distributed."

So based on that, doesn't it sound like the value will be determined in six months?

A In that instance, yes. I think what I was providing a distinction on is that from the view of the Debtor, the distribution effectively would have occurred at closing of the transaction for all parties based on their pro rata distribution of crypto. In that instance, at the end of the six month period, to the extent they were in a non-supporting jurisdiction, yes, that -- they would be then auto-liquidated, effectively, with the cash distribution being made on that basis.

That's very similar to in the toggle plan, for example, at the end of the 30-day period to the extent that customers are allowed to withdraw their crypto, to the extent they have yet to do that, those customers would also be auto-liquidated with distributions being made at then prevailing market prices.

THE COURT: So Mr. Tichenor, just -- sorry to interrupt, but just to make sure that I've got this right. There will be one point in time at which all customers' proportionate holdings of crypto will be established. When customers can actually receive that may depend on regulatory issues in the states where those customers live so that

the six month period. From our perspective, we viewed that as the highest and best value from the state perspective. We do also understand that, you know, state regulators on a state-by-state basis could provide provisional licensing. I can't speak for Binance's appetite, though, with regards to whether or not that type of a structure would make sense. You know, I think from a business perspective though, only having the ability to withdrawal is very different than being able to establish a relationship with an underlying account holder.

Q So at this point, does Binance have a one-to-one basis for the coin they're buying from Voyager?

A I'm sorry, I may not understand the nature of the question. So the -- upon the coin being transferred to Binance, it would be held in effectively a custodial capacity and therefore it would be on a one-to-one basis. We also understand that as it stands today, they hold coin on a one-for-one basis.

Q Okay, so that basis would continue for the coin that they then purchase from Voyager?

A Yes, and by purchase, I think, it's you know, the coin would transfer and then they would effectively be holding it on behalf of the customer that has effectively received that distribution.

Q And then are you aware that Binance had a license

customers were Binance has authority to make the distributions may receive it earlier. The other customers may receive it if and only when the regulatory authorities do what's necessary to allow Binance to do it in those states, and if six months goes by that the crypto that they got will just be liquidated, it will have to be at the price that's prevailing at that time, but the amount of crypto will have been determined at a prior time and on an equal pro rata basis. Is that right?

THE WITNESS: That's correct, Your Honor.

MS. RYAN: Okay. So I have just a couple of other questions, and thank you, Your Honor. That was an excellent explanation of his testimony. I do appreciate that.

BY MS. RYAN:

Q So how much of the purchase price is allocated to Binance's ability to hold the nonconsenting jurisdictions' coins for six months?

A I can't -- I don't know the answer to that.

Q Okay. Did Voyager and Binance ever consider through a plan allowing the unconsenting jurisdictions' customers to have a withdrawal only account at Binance so that their coin can be transferred at the same time as everyone else's and all they would be able to do is withdraw?

A The nature of the discussions that we had related to the proposed transaction based on the APA. They sought for

application pending with the Texas Department of Banking for a year that it abandoned due to the inability to submit financial documents to the Department of Banking?

A I'm aware that Binance has had discussions with the Texas state regulators. I can't speak to the specifics though of discussions that they've had as I wasn't a party to those.

MS. RYAN: Well, I think those are all the questions I have for now. Thank you for your time.

THE COURT: Okay. And did the attorney for the Vermont objectors have questions?

MS. ROOD: Thank you, Your Honor. Jennifer Rood for the Vermont Department of Financial Regulation. I just had one question that follows up on the Court's question about wallets and also Ms. Ryan's question.

CROSS EXAMINATION OF BRIAN TICHENOR

BY MS. ROOD:

Q Ms. Ryan asked you whether you and -- Voyager and Binance have discussed having withdrawal only. Well, I have a related question. I mean, I recognize that to migrate customers, wallets have to be set up, but is there any reason other than Binance's desires, sort of marketing desires, why withdrawal only wallets could not be set up so that the account holders in unsupported jurisdictions could be treated approximately equally with those in the other



jurisdictions?

A I can't speak to the nature of the impact that that might have on their own infrastructure. I just don't know the answer to that.

MS. ROOD: All right. That's all I had. Thank you.

THE COURT: Can I just ask the attorney who just asked that question, under Vermont and the other -- any of the unsupported states here, under your rules, is it your position that Binance could set up accounts for these customers right away from which they could either leave their crypto with Binance or withdraw it or -- I understood that the situation was that Binance wouldn't be allowed to do that. Am I wrong about that?

MS. RYAN: Your Honor --

MS. ROOD: -- Vermont -- sorry.

MS. RYAN: Sorry, Ms. Rood. This is Abby Ryan from the Texas Attorney General's Office on behalf of the State Securities Board and the Department of Banking. Through a plan approved by Your Honor and customers from Texas and nonconsenting jurisdictions having just a withdrawal account, that is something we would consider and be happy to discuss with Binance and the Debtors, Your Honor.

MS. ROOD: If I could interject, Jennifer Rood

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late Sunday night and there was a fairly substantial change in the approach being taken. So we have not had time before this to discuss this, but I think it is -- I think there is a way to hopefully get this issue perhaps resolved if we had some time. And I'm not talking weeks. I'm just talking days to actually work through this.

MS. OKIKE: Your Honor, this is Christine Okike from Kirkland and Ellis on behalf of the Debtors. From our perspective, we don't think we're actually seeking your approval of this provision today, and we're willing to continue to work with the unsupported states in the lead-up to confirmation to hopefully come to a consensual resolution. But we're prepared to move forward with the relief that we're seeking today, you know, without having come to some sort of an agreement.

THE COURT: All right. Are there any more questions for the witness?

MAN 2: --Your Honor, will --

MS. RYAN: -- Ryan for --

MAN 2: -- creditor --

MS. RYAN: I have -- I apologize. This is Mrs. Ryan. I had one final question for the witness, if that's okay.

THE COURT: Okay.

RECROSS EXAMINATION OF BRIAN TICHENOR

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from Vermont. From -- under Vermont law, and I can't speak for every unsupported jurisdiction, but for Vermont, we do not think a money transmitter license is required for either Voyager or Binance to make distributions directly to creditors under a Court approved plan. What they cannot do is allow those customers then to carry on with Binance, you know, into the future without having proper licensure. But withdrawal only wallet or some other form of direct distribution would not, in our view, violate Vermont money transmitter law. And again, I can't speak for other jurisdictions, but I have to think that there's a path here that we could get to that would make some of us less unhappy.

MS. CORDRY: And Your Honor, this is Karen Corddry, if I might just throw in one sentence here.

THE COURT: Yeah.

MS. CORDRY: Okay --

THE COURT: Go ahead.

MS. CORDRY: This particular point has been raised with Debtor and Binance and we have made clear we would like to discuss these matters. We suggested an adjournment of the hearing. That wasn't agreed to, but we would think that perhaps holding the hearing open for a short period of time might allow this particular point to be discussed. I mean, this only came up after we got these documents, you know,

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BY MS. RYAN:

Q So at a high level, Binance is basically purchasing a customer list. Will Binance receive any of the personally identifiable information of the nonconsenting jurisdictions' customers before it's determined whether they can get licensed in the states or not?

A Yes, that's my understanding. All the personal identifiable information associated with the entire customer base would transfer at closing of the transaction.

Q So what's the point in holding their coin for six months while they attempt to get licensed, when they already have the information -- they being Binance -- and once licensed, they have the information to reach out and try to get their business?

A My understanding is that, you know, from a business perspective, it's very different establishing a relationship with a customer directly where money would be on their platform, it would require the customer to log into the platform. They would get the experience associated with --

MAN 3: Baby. Baby.

THE COURT: Somebody needs to mute their phone. Please, if you're not actively questioning or speaking, mute your phone.

BY MS. RYAN:

A So to continue, Your Honor, the nature of the

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engagement with the customer in that instance would be very different relative to an inbound marketing campaign, for example, requiring that customer to log in, engage, understand the experience, trade, et cetera is very different engagement with an underlying customer relative to a marketing distribution, for example.

And so we do often see this in fintech organizations where for example, there's a concept of CAC which relates to the cost of acquiring a customer and actually having them on the platform itself, which is very different than, for example, buying a distribution list with a group of emails to try and market to those customers and actually have them go onto the platform itself. It's a very different customer experience in that regard.

Q So if Binance were to set up withdrawal accounts only for the nonconsenting jurisdictions, if they were able to get licensed at a later date, those accounts would still exist presumably, right?

A Presumably, I think, and I can't speak for Binance specifically on their own view. I would characterize that though, as probably being a different relationship to the extent that you were to log in and were solely directed to being able to withdraw funds relative to having a more broad and direct engagement experience, potentially (audio drops) platform post-closing, knowing that you are able to do more

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MAN 2: Thank you.

CROSS EXAMINATION BRIAN TICHENOR

BY MAN 2:

Q So what I heard earlier from the witness is the reason why Voyager can't distribute the coins back to the creditors directly is it's too complicated. I mean, obviously they don't have Court approval to do so, but if that was so granted, you know, just days before the accounts were shut down and locked millions of people were withdrawing. I mean, that's one of the reasons why they shut down and locked the accounts.

All the KYC has already been documented it's still being retained. It should just be a quick toggle after the Court allows it to be able to take that pathway. And the reason why I'm asking is because I feel all of the financial and the risk management of this action of transferring all of us as customers over to Binance is all falling on creditor's shoulders. Binance parent company, you know, it's having challenges both at the national and --

THE COURT: Let me --

MAN 2: -- state level.

THE COURT: I'm going to -- let me interrupt you. Let me interrupt you.

MAN 2: Yes, sir.

THE COURT: I need you to ask questions of the

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than just withdraw your crypto. So in that instance, you could see a situation where customers in an unsupported jurisdiction, for example, would log in, withdraw their crypto immediately, and then would even upon that jurisdiction becoming a supported state, would be less likely to engage with the platform even to the extent they were marketed to on an after the fact basis, by virtue of the fact that all they did was withdraw at the onset.

Q And just one last question, and I truly mean it this time. In the due diligence that was done with Binance and the regulatory issues, did Binance present you with the publicly available letter from the Texas Department of Banking regarding the abandonment of their year-long application for a license?

A I did not review that document.

MS. RYAN: Thank you. I have no further questions.

THE COURT: Okay. Anybody else --

MAN 2: Your Honor, will creditors have a chance to ask a question or speak?

THE COURT: Have you have you asked for a speaking line today?

MAN 2: Yes, sir.

THE COURT: Okay. If you have a question for the witness, you may ask --

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witness. If there's an objection you wish to make later, I can hear the objection, but right now we're taking evidence so -- rather than arguments. So if you have a question of the witness, please pose it.

MAN 2: Yes sir. Thank you for clarifying format to me.

BY MAN 2:

Q So the question is, I'm confused where the complexity is for allowing Voyager instead of handing us off to an entity that none of us have chosen to associate ourselves with, where is the complexity with reinitiating the accounts and utilizing the KYC that Voyager has already secured over many years to allow us to withdrawal the crypto, whatever is remaining of it to our own personal benefit.

A Yes, and appreciate the nature of the question. So I think there is a distinction between the references relating to the ability to withdraw crypto, for example, relating to unsupported states in connection with a Binance.US transaction relative to what's being referred to in the plan as a toggle plan.

And so as contemplated in the plan itself, to the extent that the Debtor were to, for example, exercise a fiduciary out to move towards the toggle transaction, in that instance, the Voyager platform would in fact actually be reopened for a period of approximately one month, which

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would then allow customers to be able to withdraw their cryptocurrency. One nuance that we would mention in connection with that, though, is that there are cryptocurrencies that for example are unable to be withdrawn outright from the Voyager platform and have never been able to be withdrawn from the Voyager platform.

That represents around 20 percent of the underlying cryptocurrency portfolio, and there has never been a situation where Voyager has had the operational ability to allow those customers to be able to withdraw those tokens in kind.

One of the advantages that we do see in the Binance.US transaction in addition to the purchase price itself is the fact that their operations allow for a withdrawal of 100 percent of the tokens on the Voyager platform, and so while Voyager itself in a toggle transaction would actually need to liquidate those tokens and convert them into cash at likely depressed market prices, in a scenario where they did a transaction with Binance, those customers would in fact actually be able to withdraw their tokens in kind for those unsupported tokens.

Q So you're stating even for the tokens that Binance does not currently support, they would be transferred from Voyager over to Binance and we as creditors will be able to withdraw them from Binance?

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confirmed?

THE COURT: We're just questioning --

MS. OKIKE: Your Honor?

THE COURT: We're just questioning the witness now. We can have argument later. Okay?

MAN 2: Yes. Understand. Thank you, sir.

THE COURT: Any other questions for the witness?

All right, thank you, Mr. Tichenor. You're excused. We're going to take a five-minute break before we proceed and -- but it'll only be five minutes, so don't go far.

(Recess)

THE COURT: All right, are we ready to resume?

MS. OKIKE: Yes, Your Honor. Your Honor, for the record, Christine Okike of Kirkland and Ellis on behalf of the Debtors. Your Honor, can you hear me okay?

THE COURT: I can, yes.

MS. OKIKE: Your Honor, in the days leading up to the FTX collapse, the Debtors realized that FTX would not be able to fulfill their obligations and commitments to the Debtors' account holders and OpCo general unsecured creditors under the asset purchase agreement. At that time, we immediately reengaged with parties that had participated in the prior sales process and received outreach from several additional parties who expressed interest in the Debtors' assets.

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A That's correct. So my understanding is that Binance's wallet infrastructure and KYC procedures would allow for an ability to withdraw those tokens on an in-kind basis.

Voyager itself does not have the ability from either a KML, AYC, or operational perspective to facilitate the withdrawal on an in-kind basis of those cryptocurrencies. And this was an element that we did analyze in connection with an array of different types of self-liquidating proposals.

Q Because that goes against my direct experience on Binance. If a token is not supported by them, so I'm -- and forgive me, I was unable to read all the hundreds of pages of documentation. Is this written verbatim that we will have that right as creditors in the APA or is this just assumptions being made at this juncture?

A My understanding is that it's disclosed in the disclosure statement, but I would have to go back through and verify. This is our understanding based on discussions that we've had with Binance around the nature of their infrastructure and agreements that they've made in connection with the transaction.

Q So it's not in writing, it's just your understanding, if I'm hearing correctly?

A I would have to review the APA again, I apologize, to see the specific language relating to that specific aspect.

Q Would it be best then that we wait until that is

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We spent about a month negotiating with those parties in an effort to improve terms and ultimately determined that the bid put forth by BAM Trading Services, Inc. or Binance.US represented the best path forward to maximize value. Your Honor, the Binance.US transaction is structurally similar to the FTX transaction but it also provides the Debtors with important protections that were not present in the FTX transaction and which are informed by our unfortunate experience with FTX.

Your Honor, the Debtors' valued the Binance.US transaction at approximately \$1.022 billion which is comprised of \$1.002 billion of cryptocurrency on the Debtors' platform as of December 18th plus an additional \$20 million of upfront consideration paid by Binance.US. There appears to be a misconception by some of the objectors that Binance.US would be required to pay the Debtors that amount to consummate the transaction and questions about whether Binance.US has the financial wherewithal to do so.

To clarify, Binance.US will only be obligated to pay up to \$35 million in upfront consideration to the Debtors. Although they are acquiring substantially all of the cryptocurrency on the Debtors' platform, they are essentially serving as a distribution agent of that cryptocurrency to account holders in accordance with the plan. Your Honor, it's also important to note that

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recoveries are largely dependent on the value of the Debtors' cryptocurrency which will continue to fluctuate until the confirmation hearing.

And just by way of example, the \$1.022 billion is tied to cryptocurrency prices as of December 18th, which we estimated as providing a 51 percent recovery to account holders. But since that time prices have risen and as of yesterday, account holders would receive a 57 percent recovery. The Debtors believe that the Binance.US transaction provides the most valuable -- the most value currently available for the Debtors' assets and ultimately their stakeholders, the fastest route to distributing that value to customers and the least degree of risk to the Debtors' stakeholders compared to other available alternatives.

It provides the most tax efficient path forward, as Binance.US will enable users to access 100 percent of the cryptocurrency coins on the Debtors' platform. It includes reimbursement by Binance.US of up to \$15 million of the Debtors' expenses in certain circumstances and provides a \$10 million reverse termination fee payable to the Debtors by Binance.US to compensate the Debtors' estates in the event that Binance.US cannot consummate the transaction under certain circumstances.

The Binance.US transaction also provides for

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creditor be held solely in a third-party bank account of an FDIC insured financial institution solely for the benefit of such customers.

And six -- and I think this one is very important -- Binance.US will not pledge, repledge, hypothecate, rehypothecate, invest, sell, lend, stake, transfer, or use any of the cryptocurrency to be distributed to account holders for any period of time and without retaining a like amount of cryptocurrency except as may otherwise be directed by the creditor themselves.

The Debtors believe that these protections significantly reduce the risks associated with the transaction and the transfer of cryptocurrency to Binance.US to facilitate distributions to creditors. Your Honor, while the Debtors believe that the Binance.US transaction is the most value maximizing option available to the Debtors today, we recognize that the cryptocurrency industry is experiencing an extremely volatile period and circumstances may change.

And for that reason, the Debtors negotiated a fiduciary out consistent with the fiduciary out Your Honor approved in the FTX APA which allows the Debtors to toggle either to a higher and better third party bid should one emerge or to a transaction where the Debtors would distribute cryptocurrency and cash to creditors on their own

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certain other protections which are designed to minimize risk. These protections include, first, all of the Debtors, cryptocurrency will not transfer to Binance.US at closing.

Rather, cryptocurrency and cash will be transferred to Binance.US following closing on a weekly basis as account holders and OpCo general unsecured creditors complete Binance's onboarding requirements which includes satisfying their know your customer requirements and accepting the Binance.US terms and conditions.

Second, Binance.US has to make any cryptocurrency and cash transferred to it by the Debtors available to those account holders and holders of OpCo general unsecured claims that have completed the onboarding requirements within five business days and to use commercially reasonable efforts to do it in 48 hours following receipt.

Third, account holders and holders of OpCo general unsecured claims will retain all right, title, and interest in the distributions made to them on the Binance.US platform.

Fourth, cryptocurrency will be held by Binance.US solely in a custodial capacity in trust for the benefit of account holders.

Fifth, cash transferred to Binance.US for further distribution to account holders or OpCo general unsecured creditors will at all times until transferred to such

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or what we have been referring to as the toggle transaction, if the Debtors determine in their business judgment between now and closing that the Binance.US transaction is no longer the highest or otherwise best option or the transaction is not consummated by the outside date of April 18th which may be extended to May 18th in certain circumstances.

As described in the APA motion, the Binance.US APA Provides for the sale to Binance.US to be consummated through a Chapter 11 plan and so through the APA motion, Your Honor, the Debtors are not seeking approval of the Binance.US transaction today. Rather, we're seeking authority for Voyager Digital LLC to enter into the asset purchase agreement with Binance.US so that we can lock in the highest and best (audio drops) for the debtor's assets determined after an extensive prepetition and post-petition marketing process.

This will allow the Debtors to receive the protections of up to a \$15 million expense reimbursement and a \$10 million reverse termination fee while progressing to the plan confirmation stage. Entry into the APA will also entitle Binance.US to up to a \$5 million expense reimbursement in certain limited circumstances, specifically if the seller breaches the APA, the Chapter 11 cases are dismissed or converted to Chapter 7, or if the automatic stay is lifted with respect to any acquired assets, the

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seller breaches the no-shop, or the seller exercises its fiduciary out.

Notably, the seller's exercise of its fiduciary out does not trigger the expense reimbursement if the seller determines to terminate the transaction to pursue the toggle transaction as a result of an effect with respect to Binance.US' business, financial condition, operations, assets, management, employees, compliance, or liabilities that would reasonably be expected to prevent or materially impair or materially delay the ability of Binance.US to consummate the transaction or materially and adversely affect the customers, creditors, or acquired cryptocurrency on the platform and such termination is not caused by the Debtors' decision to pursue a higher or better offer from a third party or because the estimated proceeds of the toggle transaction are greater than the consideration under the Binance.US transaction.

Your Honor, the Debtors believe that the expense reimbursement is fair and reasonable under the circumstances. Given that upon entry into the APA, Binance.US will be obligated to remain committed through the Debtors' plan confirmation process during which the Debtors may exercise their fiduciary out to pursue a higher and better offer.

Importantly, Your Honor, holders of account holder

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cryptocurrency coin that was on deposit with the Debtors as of the petition date is consistent across the cryptocurrency portfolio so that we can process and initiate in-kind distributions.

And to effectuate the rebalancing exercise prior to the effective date, the Debtors would plan to enter into a series of transactions that would result in the buying and selling of cryptocurrency coins until the balancing ratio is consistent for each type of crypto coin -- cryptocurrency coin held by the Debtors.

Your Honor, the business judgment rule governs the Debtors' entry into the Binance.US APA. The Debtors believe that they have satisfied the standard. Your Honor, we received eight objections or reservation of rights to the APA motion filed by the SEC, New Jersey, Vermont, New York, Texas, CFIUS, the U.S. Trustee, and Oracle. We have resolved for purposes of today the objections of Oracle, the SEC, and New Jersey.

Notably, Your Honor, your entry into the APA motion is supported by the Unsecured Creditors Committee. Your Honor, at its core, the objectors question the Debtors' exercise of their business judgment in determining to enter into the Binance.US APA. First, they question whether the Binance.US transaction is feasible. The Debtors submit that it is. We have performed due diligence on Binance.US and

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claims and general unsecured claims are entitled to vote on the Binance.US transaction and all parties in interest will have the opportunity to object to the transaction on any valid grounds at the confirmation hearing. Your Honor, the Debtors are also seeking authority to rebalance their cryptocurrency portfolio which will be necessary in either scenario either the Binance.US transaction or the toggle transaction.

The Debtors' loan to 3AC resulted in a hole in the Debtors' cryptocurrency portfolio and a deficiency of certain cryptocurrency coins, particularly Bitcoin in USBC. In addition, due to the dollarization of account holder claims as of the petition date and the continued fluctuation in cryptocurrency prices since then, there is an imbalance in the Debtors' cryptocurrency portfolio.

As a result, to effectuate pro rata in-kind distributions of the cryptocurrency to account holders, the Debtors must rebalance their cryptocurrency portfolio through the purchase and sale of cryptocurrency in a series of transactions or what we've been referring to as the rebalancing exercise.

The rebalancing exercise will be conducted to ensure that the aggregate value in U.S. dollars for each type of cryptocurrency coin held by the Debtors as a percentage of the aggregate value of such type of

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Binance.US' financials show that it has ample cash on hand to pay the Debtors up to \$35 million in cash, the maximum amount that may be due under the Binance.US APA.

In addition, the risk of a run on the bank which has befallen some of the other companies in the industry is minimized by Binance.US' business model. Our understanding is that Binance.US maintains 100 percent reserves for all of its customers' digital assets. That means that if a customer has deposited one Bitcoin with Binance.US, Binance.US holds one Bitcoin on account of such customer.

And importantly, Your Honor, our understanding is that Binance.US does not engage in any lending. Based on what we know, even if all of Binance.US' customers withdrew all of their assets, Binance.US would still have the financial wherewithal to consummate the proposed transaction. Further, Your Honor, any issues relating to Binance.US' ability to consummate the sale transaction are really not right for the relief that we're seeing today and are preserved for confirmation.

Your Honor, the objectors question the due diligence the Debtors performed on Binance.US. Your Honor, as Mr. Tichenor has described in detail, the Debtors have conducted due diligence on Binance.US which included reviewing documentation and discussions with senior management relating to audited financial statements, interim

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1 unaudited financial statements, available liquidity, related  
2 party services agreements, wallet infrastructure, AML/KYC  
3 procedures, money transmitter license statuses, and business  
4 plans submitted to certain state regulators.

5 Third, Your Honor, the objectors expressed concern  
6 over Binance.US' custody and security protocols.  
7 Binance.US' security protocols have achieved various third-  
8 party expert certifications, attesting to their compliance  
9 with industry standards. In terms of custody, Your Honor,  
10 BAM Trading Services, Inc., a Delaware corporation and the  
11 purchaser under the Binance.US APA will custody  
12 cryptocurrency distributed to account holders in connection  
13 with the transaction pursuant to its standard wallet  
14 infrastructure which is stored on servers at Amazon Web  
15 Services.

16 THE COURT: Could you repeat what you just --  
17 could you just repeat what you just said as to who would --

18 MS. OKIKE: Yes, Your Honor. BAM Trading  
19 Services, Inc., which is a Delaware corporation -- they are  
20 also the purchaser under the Binance.US APA -- they will be  
21 the entity that is custodying cryptocurrency distributed to  
22 account holders in connection with the transaction and  
23 pursuant to their standard wallet infrastructure which is  
24 stored on servers at Amazon Web Services.

25 THE COURT: Okay.

1 "Voyager may share your information with a buyer or other  
2 successor in the event of a merger, divestiture,  
3 restructuring, reorganization, dissolution, or other sale or  
4 transfer of some or all of Voyager's assets, whether as a  
5 going concern or as part of a bankruptcy, liquidation, or  
6 similar proceeding, in which personal information held by  
7 Voyager about you and your Voyager account is among the  
8 assets transferred."

9 Your Honor, we disagree with the U.S. Trustee that  
10 a consumer privacy ombudsman is required in these cases,  
11 given that the Debtors fall within the exception in Section  
12 363(b)(1) regarding a transfer of personally identifiable  
13 information in connection with the sale that is consistent  
14 with their existing privacy policy.

15 Finally, Your Honor, Vermont, New York, Texas, and  
16 Hawai'i are what we refer to as the unsupported  
17 jurisdictions, allege that the Binance.US APA unfairly  
18 treats account holders located in their jurisdictions. Your  
19 Honor, it bears repeating that we are not seeking approval  
20 of the Binance.US transaction today and we view the  
21 objections of the unsupported jurisdictions regarding the  
22 treatment of customers in their states as premature and more  
23 appropriately considered at the confirmation hearing. That  
24 being said, I'd like to briefly respond to the objections.

25 The objections really center on the potential

1 MS. OKIKE: Your Honor, as noted, cryptocurrency  
2 will be transferred from the Debtors to Binance.US only as  
3 and when relevant creditors on board onto the Binance.US  
4 platform and upon such transfer, Binance.US will be  
5 obligated to make such cryptocurrency available to the  
6 relevant creditors within five business days of receipt. We  
7 believe this structure of weekly transfers as customers sign  
8 up will allow the Debtors to quickly become aware and  
9 rectify any issues that may arise in connection with  
10 consummation of the transaction.

11 Your Honor, the U.S. Trustee also alleges that the  
12 Binance.US APA does not protect against the unauthorized  
13 transfer of customer information prior to closing. The  
14 Binance APA provides an option for customers to opt in to  
15 the transfer of their data preclosing so that if the  
16 transaction is approved, they will be able to access their  
17 distributions more quickly. Outside of a customer  
18 voluntarily agreeing to provide their data to Binance.US,  
19 there will be no transfer of account holder data preclosing.

20 Rather, for any customers that do not opt into the  
21 transfer of their data preclosing such data will be  
22 delivered to Binance.US on the closing date. The transfer  
23 of data to a buyer in connection with the restructuring is  
24 specifically contemplated by Voyager's privacy policy.  
25 Specifically, Section 6 of Voyager's privacy policy provides

1 form, cash versus cryptocurrency, and delay, six months  
2 versus three months, of recoveries to account holders in  
3 unsupported jurisdictions. Your Honor, the Binance.US APA  
4 and the plan provides for the opportunity for all account  
5 holders to receive distributions in kind, and it's well  
6 established that all claimants are required to receive  
7 equality of treatment under Section 1123(a)(4), meaning that  
8 all class members receive equal value.

9 But multiple Courts have held that this does not  
10 mean that all claimants are required to receive equality of  
11 result. Section 1123(a)(4) is satisfied if claimants in the  
12 same class have the same opportunity to recover. This means  
13 that if a plan subject to all the members of the class to  
14 the same means of claim determination, it's sufficient to  
15 satisfy the requirements of Section 1123(a)(4) and we  
16 believe the plan does that.

17 All account holders are subject to the same  
18 process for claims satisfaction, but that process does not  
19 have to yield the same results for each class member and the  
20 fact that an account holder is located in a state where  
21 Binance.US does not have regulatory approvals to make a  
22 distribution in cryptocurrency may dictate a different  
23 result. We view that similar to cases where you have CLOs  
24 who can't receive equity and so they get the equivalent  
25 amount in cash.



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1 Your Honor, the Debtors' focus from the start of  
 2 these cases has been to maximize recoveries for the creditor  
 3 body as a whole and we believe that entering into the  
 4 Binance.US APA will allow us to do that. One of the  
 5 benefits of the Binance.US transaction -- and this is in  
 6 response to, I don't remember the gentleman's name, but the  
 7 gentleman who was questioning Mr. Tichenor -- is that  
 8 Binance.US supports all of the tokens listed on the Debtors'  
 9 platform, with the exception of VGX, which they have agreed  
 10 to submit for the process of listing, and therefore  
 11 Binance.US would be able to make in-kind distributions to  
 12 customers of the same type of cryptocurrency that they had  
 13 on the Voyager platform as of the petition date.

14 If Binance.US is not able to make distributions in  
 15 kind, it will be because the unsupported states themselves  
 16 have not allowed it to happen, not because the Debtors are  
 17 seeking to discriminate against customers in those states.

18 Your Honor, in terms of the potential delay in  
 19 distribution, the business deal that the Debtors struck with  
 20 Binance.US gives them a six-month window to obtain the  
 21 necessary regulatory approvals to make distributions in kind  
 22 to all customers on the Debtors' platform, and this is three  
 23 months longer than the window for customers in supported  
 24 jurisdictions who, if they don't sign up, will also be  
 25 converted to cash at that point in time.

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1 it's resolved before the confirmation hearing.

2 Finally, Your Honor, with respect to CFIUS, the  
 3 APA motion does not seek to limit CFIUS' right to review the  
 4 Binance.US transaction, and as Mr. Sussberg noted, CFIUS is  
 5 interested in this transaction and we are taking this issue  
 6 head on seeking to accelerate CFIUS' review by making a  
 7 voluntary CFIUS filing. If CFIUS determines in its review  
 8 process that the Binance transaction should not be closed,  
 9 we have built in the protections to be able to pivot to the  
 10 toggle transaction.

11 And so Your Honor, we believe that we've satisfied  
 12 the standard for the relief that we're seeking today. I'm  
 13 happy to answer any questions.

14 THE COURT: I do have questions and comments that  
 15 I'd like to go through before we hear from any of the other  
 16 parties, because they may resolve some of those other  
 17 parties' issues.

18 I found it very helpful to hear the answers to  
 19 some of the questions about how the arrangement will work,  
 20 but I guess a couple of preliminary questions. I understand  
 21 that the Delaware Court has approved the stipulation that --  
 22 about the termination of the FTX transaction and we have  
 23 entered our own order approving that stipulation. Were  
 24 there any objections to that relief in Delaware?

25 MS. OKIKE: No, Your Honor. There were no

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1 At its core, Binance.US is acquiring the Debtors'  
 2 customer relationships and the opportunity to try to keep  
 3 customers on their platform. They negotiated for the right  
 4 to try to get approval from the four states where they do  
 5 not have existing authorizations today to be able to make  
 6 distributions in kind to those customers.

7 And it's important to note that we believe the  
 8 customers as a whole would like to receive in-kind  
 9 distributions, particularly given the tax consequences and  
 10 that's what we're trying to facilitate through the  
 11 Binance.US APA. From the Debtors' perspective, all account  
 12 holders are treated the same. They will receive the same  
 13 pro rata recovery, although some crypto -- some recoveries  
 14 maybe in cryptocurrency or cash or in slightly different  
 15 timelines to ensure compliance with regulatory restrictions.

16 The Debtors would like nothing more than for  
 17 Binance.US to make in-kind distributions to customers in the  
 18 unsupported jurisdictions and we have had productive  
 19 conversations with the unsupported jurisdictions to date and  
 20 we're committed to continuing to work with them in  
 21 Binance.US and lead up to the confirmation hearing to come  
 22 up with potential solutions.

23 But again, Your Honor, we don't believe this is an  
 24 issue ripe for today, given that we're not seeking approval  
 25 of the Binance.US transaction and this issue may be moot if

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1 objections and the order was submitted under certification  
 2 of counsel after the objection deadline passed.

3 THE COURT: And has it has it been entered now by  
 4 Delaware?

5 MS. OKIKE: Yes, Your Honor. It was entered last  
 6 night, I believe.

7 THE COURT: Okay. At the outset of the prior  
 8 hearing regarding FTX, we clarified just what was being  
 9 approved and what the practical effect was of other -- in  
 10 that case had been some confusion, but it seems pretty clear  
 11 here that transaction when -- although I'm being asked to  
 12 approve the entry into the agreement, the agreement itself  
 13 is contingent on plan confirmation so that in effect, what's  
 14 going into effect through my agreement is just the no-shop  
 15 and fiduciary out provisions and the potential expense  
 16 reimbursements; is that right?

17 MS. OKIKE: Yes, that's correct, Your Honor.

18 THE COURT: Okay. As to the nature of the  
 19 relationship here, it's a little confusing to me because  
 20 there are parts of the agreement that say that Binance will  
 21 acquire the coins themselves and there's other parts that  
 22 say that title will remain with Voyager until certain  
 23 distributions are made. Section 6.12(e) says that coins  
 24 will be held in trust or custody through and including the  
 25 time as they're returned or distributed to the seller or to

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the user/eligible creditor, and similar provisions as to delayed acquired coins. But I wonder if those provisions are really quite as clear or as strong as they should be.

Number one, I don't know why the agreement says that Binance is acquiring the coins if the rest of the agreement says that they're acquiring only nominal title and holding it in trust or custody. Is there a reason why it's -- why the other parts of the agreement are phrased as Binance itself is buying the coins?

MS. OKIKE: Your Honor, I think it's structured this way because the coins are going to transfer to them. I agree with you, that title will remain with Voyager, obviously, until the transfer and then pass to the customer at that point in time.

I think we do need to kind of -- the agreement does need to contemplate that transfer, which is I think what we're trying to do when we talk about, you know, acquired assets, that they're -- that this is something that's transferring over to them in connection with the agreement, but if there's certain provisions that we need to clarify to make clear that they're not actually acquiring title to the coins, we can of course make those adjustment.

THE COURT: Might be able to just put it in the order that --

MS. OKIKE: Yes.

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this is a trust or a custody relationship, is that sufficient? There have been articles written about this, and I know that in the Celsius case there were some disputes over whether it was enough to say that there was a trust or custody relationship that was contemplated, and whether, for example, the trust assets had to be segregated from other assets. Is there something else we ought to be doing here, for example, requiring that Binance establish a separate wallet, or the cryptocurrency that is coming from Voyager and is to be distributed to the Voyager customers, and that it remain in that separate wallet until the appropriate point of time at which the customer becomes a Binance customer, at which point it can just go and be part of whatever the normal Binance arrangement is? Isn't that necessary to kind of give effects to what is contemplated here?

MS. OKIKE: Your Honor, we've had discussions on this point, and our understanding is kind of the infrastructure that Binance has. It's not really possible to kind of create an infrastructure where there's going to be (indiscernible) of what's transferring over to them. And that the costs of trying to do so are, you know, very expensive such that, you know, the purchase price itself may be reduced. But you know, I think our view is that we (indiscernible) --

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THE COURT: (audio drops) clarification --

MS. OKIKE: That works.

THE COURT: -- of the agreement. And also, the order says that title remains with the seller. That's literally not correct, is it? Isn't title here whatever is reflected on the key and won't that be with Binance? Don't you really mean to say that beneficial title or beneficial ownership will remain, and that only nominal title will be with Binance?

MS. OKIKE: I'm sorry, Your Honor. Which provision exactly are you referring to?

THE COURT: Well, there are various points in the agreement where it says the title remains with the seller, right? Including 6.12(e). But that's not -- literally not right, is it? I mean, once they're transferred to Binance, and the only way that happens is through the block chain, right, isn't title then with Binance? Or don't you mean to say that Binance has only nominal title?

MS. OKIKE: Yes.

THE COURT: And that the beneficial ownership will be with the seller or with the user once it's put in the user's name or in the user's account?

MS. OKIKE: Yes, Your Honor. That's correct. We can address that language.

THE COURT: And then, you know, just saying that

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THE COURT: I don't understand that. Please explain that to me. What I was suggesting is that there be a separate wallet for the cryptocurrency that's going to go to the -- be distributed as part of the plan. What -- why is that so expensive just to establish a separate wallet?

MS. OKIKE: Yeah. My understanding, Your Honor, and obviously Binance can speak to it as well, is that they have an existing wallet infrastructure, right, that kind of governs obviously the assets that they're holding for customers on their platform. And that to have, you know, something segregated out of that infrastructure would be basically require them to kind of create, you know, a whole new different, you know, wallet infrastructure.

And so we had conversations about whether this was a possibility, and my understanding is that, you know, you would have to kind of develop, you know, new code and other things to try to be able to effectuate where they're not holding the assets that are transferred over them along with other customer assets.

MR. GOLDBERG: And Your Honor, this is Adam Goldberg of Latham Watkins on behalf of Binance U.S. If I can add to that, I would just say that, you know, you've raised a great question, Your Honor, which is something that the Creditors committee focused on very closely. And if you're -- if you've seen the redline of the APA between the

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1 initial filing and now, that will reflect the changes that  
2 we made in response to the committee raising this very  
3 issue.

4 And we fully agree with Ms. Okike's  
5 representations that it would be technically very  
6 challenging and expensive and time-consuming to set up a  
7 segregated wallet system. And so rather than embark on a  
8 process like that, we worked with the committee to resolve a  
9 procedure under the APA such that the cryptocurrency is not  
10 actually transferred to Binance U.S. under the APA until the  
11 time that individual customers have agreed to the terms of  
12 service and become eligible customers under the Binance U.S.  
13 platform.

14 And the -- after the closing at that stage, the  
15 cryptocurrency would then be transferred as customers join  
16 the Binance U.S. platform on a weekly basis, and Binance  
17 U.S. would be required to very swiftly make that available  
18 to customers so that there is a very minimal amount of time  
19 in which any cryptocurrency would be held in anything other  
20 than a customer account subject to the terms of service that  
21 are intended to provide clarity that that cryptocurrency is  
22 owned by the customers.

23 And I think we heard the testimony today, Your  
24 Honor, based on the Debtor's diligence that Binance U.S.  
25 holds -- it holds one-to-one cryptocurrency reserves. In

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1 THE COURT: And the committee is satisfied that  
2 this arrangement without any further segregation is  
3 sufficient?

4 MR. AZMAN: Your Honor, it's Darren Azman from  
5 McDermott Will and Emery for the Committee. We have a few  
6 comments I'd like to make and then I can address your  
7 question. We obviously took the long way to get here, not  
8 by choice of course, but the committee fully supports the  
9 Binance transaction and the plan. Not only do we think the  
10 transaction offers Creditors the best opportunity to  
11 maximize recoveries through the distribution of assets that  
12 are on hand right now, but probably more importantly the  
13 ability to recover additional amounts on the back end  
14 through litigation that will be pursued by a Creditor  
15 controlled trust.

16 We view that feature as a cornerstone of the plan  
17 because 50 cents is not enough. Creditors deserve more.  
18 And we'll have the ability to do that after the plan goes  
19 effective.

20 With respect to the Binance transaction and your  
21 questions, we certainly had our concerns and we heard  
22 concerns from many Creditors. Probably the biggest concern  
23 we had was ensuring that we did not have an FTX repeat or  
24 something that could've been far worse if Voyager's crypto  
25 had been transferred to FTX prior to the bankruptcy filing,

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1 other words, Binance U.S. has cryptocurrency on hand for 100  
2 percent of customer deposits.

3 THE COURT: And just to make sure everybody's on  
4 the same page, does a customer of Voyager have to agree to  
5 be a Binance customer in order to receive an in-kind  
6 distribution?

7 MS. OKIKE: Yes, Your Honor.

8 THE COURT: So what you're saying is that the  
9 customer has to make that determination, at which point it  
10 will be subject to the normal Binance situation. And that  
11 in the absence of that, they'll just get a cash  
12 distribution.

13 MS. OKIKE: Correct, Your Honor.

14 THE COURT: Who will make the cash distributions?

15 MS. OKIKE: The cash distributions will be made by  
16 Voyager. Because we will only have that situation in which  
17 a customer has not signed up. At that point in time with  
18 respect to customers in the supported jurisdictions, the  
19 Debtors would allow Binance to basically serve as the  
20 liquidation agent for that cryptocurrency. So although we  
21 would be holding it for customers that have not signed up  
22 until that period of time, we would then execute a  
23 transaction where Binance would liquidate the crypto  
24 attributable to those customers for cash and send the cash  
25 back to Voyager for distribution to customers.

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1 prior to FTX's bankruptcy filing.

2 The initial version of the proposed Binance  
3 transaction called for Voyager to transfer all of their  
4 crypto on day one of the closing. The problem with that  
5 structure, as you've heard now, is that customers would not  
6 be able to access their crypto immediately. For example, a  
7 customer who maybe waited four weeks to enroll with Binance,  
8 their crypto would've been sitting at Binance. And moreover  
9 in certain states, as you also know, Binance is not licensed  
10 as we sit here today. So in a worst case scenario, at  
11 closing, Voyager would have transferred all of its crypto to  
12 Binance, and then a few days later Binance could file for  
13 bankruptcy leaving this estate with a billion dollar  
14 unsecured claim.

15 So we asked Binance a number of ways to address  
16 this. And ultimately where we landed is this structure  
17 where crypto is only transferred when it's ready to be made  
18 available to a customer's account. Binance listened to our  
19 concerns, and they worked hard to address those concerns.  
20 Ultimately they agreed to what is now in the APA. It's a  
21 weekly transfer of crypto. And the outcome of this new  
22 structure is that crypto will be made available to a  
23 customer's account within days after Voyager transfers that  
24 crypto to Binance.

25 At that time, the customer can trade that crypto,

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1 sell it, withdraw it entirely if they want to. Of course  
2 customers will need to make their own decision about whether  
3 they want to keep their crypto at Binance, but that is up to  
4 each individual Creditor. Again, our concern was ensuring  
5 the safety of crypto at all times before it's put into the  
6 customer's account and they have control of it, and we have  
7 accomplished exactly that I think with the revised APA.

8 You know, you asked whether Binance should hold  
9 crypto in a segregated wallet. I just told you a minute ago  
10 that we had proposed several solutions to Binance, but we  
11 ultimately learned that segregating the crypto in a  
12 different wallet would be technically challenging and  
13 expensive for Binance to accomplish within their ecosystem.  
14 That is when we pivoted to the weekly transfer concept,  
15 which again limits the period of time during which Binance  
16 is holding crypto, and the customer does not have access to  
17 it.

18 If the customer does not want to be on the Binance  
19 platform, they can immediate withdraw their crypto. Or if a  
20 customer is really concerned and wants nothing to do with  
21 Binance, they can wait the three-month period, and then they  
22 will get cash from Voyager. And we believe that this is  
23 sufficient protection for Creditors.

24 THE COURT: Thanks. As long as you've mentioned  
25 that, does the customer have to wait the three months, or

1 address them at another time.

2 THE COURT: Yeah. I'll -- I'm going to come to  
3 the different objections in course here. I'm just looking  
4 over all the comments I had about the custody arrangements  
5 to see if there's any other questions that I wanted to ask.  
6 Just give me a minute. On the transfer of the customer  
7 data, it does seem that under the agreement, while it won't  
8 happen until closing, all data relating to both active and  
9 inactive accounts of users or former users, as long as they  
10 were in the United States, will be acquired by Binance U.S.  
11 And it's all defined as acquired user data.

12 The U.S. Trustee had objected and asked for a  
13 privacy ombudsman, but Voyager has pointed out that that's  
14 only required if a sale does not comply with existing  
15 privacy policies, and says that the Voyager privacy policy  
16 provides for such transfers. What is the U.S. Trustee's  
17 current position in that regard? Is somebody on the phone?

18 MR. MORRISSEY: Your Honor, Richard Morrissey for  
19 the U.S. Trustee. I'm sorry. I was actually timed out  
20 there for a moment. The U.S. still believes that a consumer  
21 privacy ombudsman should be appointed in this case. As far  
22 as the privacy policy, we did receive a copy of the privacy  
23 policy, and we did review, I think it was paragraph 6 of  
24 that privacy policy, which indicated, Your Honor, that the  
25 private information, the PII, could be shared in the event

1 can the customer immediately elect to receive cash?

2 MR. AZMAN: I'll let Ms. Okike correct me if I'm  
3 wrong, but I do not believe that there's an election for a  
4 customer to essentially terminate that three-month wait  
5 time. And that was -- look, there are a number of  
6 provisions in the Binance APA that we would love to be more  
7 favorable to Creditors, but at the end of the day they are  
8 paying \$20 million for the opportunity to acquire these  
9 customers. And I think that was an important point, an  
10 economic consideration for them in the APA to have that  
11 three-month waiting period.

12 MS. OKIKE: That's correct, Your Honor. There is  
13 a three-month period for them to have the opportunity to get  
14 customers to sign up for the platform.

15 THE COURT: Okay. All right. Let me skip over.  
16 That answers some of my questions. I'll skip that one.

17 MR. GOLDBERG: Your Honor, this is Adam Goldberg  
18 of -- on behalf of Binance U.S. again. Just on that  
19 particular issue, a customer could open an account through  
20 Binance and then liquidate their crypto immediately if they  
21 wish to pursue that path.

22 THE COURT: Right.

23 MR. AZMAN: Your Honor, it's Darren Azman again.  
24 I have some other comments regarding the objections from the  
25 states, but if you want to stick on this topic, then I can

1 of a sale or other transaction.

2 However, Your Honor, that privacy policy was  
3 undated. I do not know, Your Honor, and I don't know if the  
4 Debtor knows, but I do not know if that privacy policy, the  
5 one that I saw and the one that counsel referred to earlier,  
6 was in effect when each and every one of the customers  
7 signed onto the platform and signed the user agreement.  
8 There is -- I know that Voyager hasn't been around for many,  
9 many decades, but I certainly don't know how long the  
10 privacy policy has been around.

11 The -- at the beginning of the case, Your Honor,  
12 you'll remember that we had a whole dialogue where the  
13 Debtor was very concerned about the privacy of the -- not  
14 only the customers, but also the employees and others  
15 involved in the case. And spreading the news of personal  
16 information of those parties was also of great concern to  
17 the court in the context of notice procedures, for example.  
18 We still have those concerns when it comes to sharing  
19 personally identifiable information with Binance.

20 The customers did not sign up with Binance as one  
21 of the customers said earlier today. And given the current  
22 state of affairs in the crypto industry, an independent  
23 third party should look into the sharing of PII with  
24 Binance. It so happens that the bankruptcy code provides  
25 for a disinterested third party, a consumer privacy

ombudsman. And I think given the facts and circumstances of this case beyond the existence of the privacy policy itself, that I think it would safer and give much comfort to a lot of customers here who are very uncomfortable with the way the case has proceeded, that at least there's an independent third party, and independent set of eyes on the transfer of a PII from Voyager to Binance.

And also, I would note that the cost of such an ombudsman in the scheme of things with respect to this case is very low and it would not place an undue burden. And under the proposed timeline, certainly the ombudsman would have sufficient opportunity to look under the covers or kick the tires, whatever expression you want to use. And I don't think it would -- it certainly shouldn't cause any harm, and I think it should provide for much comfort to the parties in interest. Thank you, Your Honor.

THE COURT: I don't have the relevant code provision in front of me at the moment, but if I remember right, it says that I can appoint and should appoint a consumer privacy ombudsman if the existing privacy policy would not permit the transfer of data that is contemplated by the agreement. I think you're not necessarily telling me that that is the case. You're just saying you have questions about whether what Voyager has said is correct when Voyager says that its privacy policy already

obviously, since we've commenced our cases. But I took a look at the customer agreement, and it does say that we can amend at any time and -- you know, without notice actually, and that customers will continue to be bound by the policy.

So I understand Mr. Morrissey's point, and I don't know the exact date of -- or whether any updates have been made to the privacy policy itself. But I would argue that in any event the customers are bound by the current terms under the terms of the agreement.

THE COURT: Mr. Morrissey, you can investigate this further. And if you have reason to doubt the policy is as stated or that it applied to customers, I'll rehear you. But I don't want to -- you know, customers have expressed concerns, but one of the concerns they've expressed is how much money is being spent in these cases. And I don't want to add yet another professional expense without a demonstration that it's actually (indiscernible).

MR. AZMAN: Your Honor, it's Darren Azman again from McDermott for the Committee. Just going to the discretionary element here, we have received thousands of inquiries from Creditors. We have lots of complaints and lots of questions about the case. I can tell you the one thing that we have not heard probably from a single Creditor in this case is this issue. So I don't actually think that this is what Creditors and customers are focused on.

contemplates the transfer of this information.  
(Indiscernible) --

MR. MORRISSEY: Your Honor, in fairness --

THE COURT: Do I have even the authority to appoint a consumer privacy ombudsman in the absence of an explicit showing that the existing privacy policies don't contemplate this?

MR. MORRISSEY: Your Honor, if -- I believe that if the privacy -- if we knew, and we don't as far as I'm aware, that the privacy policy cited by counsel was in existence and applied to all the customers from the beginning -- from the inception of Voyager's platform, I think that argument may apply. But we don't know that. And it could be --

THE COURT: Why would it have to have been in existence from the inception of the platform? I assume the online agreements say that the customers automatically are bound by changes to the policies, and they probably get notice of changes of privacy policies. So --

MR. MORRISSEY: Well, again, Your Honor --

THE COURT: Ms. Olike, do you know when the -- you didn't just adopt this policy a week ago, right? Do you know when this policy was put into effect?

MS. OKIKE: Your Honor, I don't know the exact date it was put into effect, but it hasn't been amended,

THE COURT: Thank you.

MR. MORRISSEY: Okay, Your Honor. And as far as the timing of the privacy policy, what matters is when the customer signed on, the process -- and I'm sure anyone on the phone can picture this -- it clicks -- they click on the user agreement to see what was there. Whether they keep clicking on the user agreement to see how it changed over time, I'm not sure if we could impose that burden on all the customers, you know, since the inception of Voyager. So again, I think it would be a reasonable thing.

And in terms of the administrative cost, Your Honor, we've had many cases with consumer privacy ombudsmen. Their shelf life is very short, and the expense is not large. Even in a small case, Your Honor, it's not large. In a case like this, it's an extremely small percentage of the overall administrative costs. Thank you, Your Honor.

THE COURT: Yeah, I'm going to deny your request without prejudice to renew in the event you have other information for me to consider as to the scope of the current policy, okay?

MR. MORRISSEY: Okay. Thank you, Your Honor. And I assume I'll be speaking later about other issues.

THE COURT: Yes. I --

MR. MORRISSEY: Thank you.

THE COURT: -- have notes about individual issues,

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and then we'll come back. We need to take another five-minute break and then we'll be back, okay?

(Recess)

THE COURT: All right. Are the parties ready to resume?

MS. OKIKE: Yes, Your Honor.

THE COURT: Okay. On the various objections by the regulatory authorities, there's a number of issues that have been raised. Let me just tell you what my reactions are, and then I might comment. First, some of the regulators have said that Voyager in the past did not comply with applicable regulations, may have violated state laws regarding the sale of -- unauthorized sale of securities, etcetera. States may or may not have issues or even claims against Voyager in that regard. I don't know if they filed claims, but I don't see that those past issues have anything to do with what we're doing today. If somebody disagrees, please tell me why. Okay. I don't hear any comment.

MR. NEWSOM: My name is Dan Newsom. I'm an unsecured creditor. I would ask that the revelation of -- in determining whether Voyager did, in fact, sell unregistered security does I believe have importance as to it relates to the releases of the directors and officers in the APA and disclosure statements.

THE COURT: Okay. That may have to be addressed

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especially in lieu of, you know, potential actions by states and various regulatory bodies only benefits the Debtors. You know, and there's been real material damages occur to the Creditors. This elimination of Creditor benefit has been known by all of the parties, the Debtors, the Debtor's counsel, the UCC counsel since late summer. All the Creditor value's been taken away from the Chapter 11 process many months ago. And real material damages have occurred to the Creditor class in my opinion.

You know, millions of salaries have been expended out of the Creditor assets. Tens of millions have been spent on legal fees, you know, over the last six months and with no unforeseeable end in sight. There's, you know, continued erosion as this continuously drags on with the market, the crypto market and the asset value just depreciating. You know, the \$20 million that the counsel both for UCC and the Debtors are promoting as the best value for us, I think that's disingenuous.

\$20 million payment from Binance, my understanding under this APA, 13 million of that is going to go to (Indiscernible). Sixty million of that is going to go to counsel for the UCC committee for the undefined future war chest to, you know, try to initiate more litigation. How many millions --

THE COURT: I'm going to stop you right there.

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at the confirmation hearing as to whether the releases are appropriate in terms of approving a disclosure statement, which -- and in terms of the adequacy of the description of what Voyager is proposing, and in terms of the -- and approval of the sale agreement on an interim basis that the overall effect depending on confirmation. I don't see how that really affects what I'm actually being asked to do today.

MR. HENDERSHOTT: Your Honor, Tracy Hendershott, another Creditor. I think those accusations do apply to this APA, and it's a larger issue, you know, tying into is Chapter 11 even appropriate for this case at this point. You know, I mean, you know more than anyone there's really two benefits to Chapter 11. One is to Creditors. They get a higher return hopefully, a higher recovery if the organization is an ongoing or reorganized entity.

And then too, the other benefit is really to the Debtors. They get to remain and power of running the whole entire process as well as the organization. They get to retain their salaries, benefits, bonuses, you know, potential releases. In this case, Your Honor, there is no benefit for the Creditors anymore in Chapter 11. There is no chance of a reorg. There's no chance of an ongoing business entity.

All the benefits that remain in Chapter 11,

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I'm going to stop you right there.

MR. HENDERSHOTT: Yes, sir.

THE COURT: First, in terms of whether there should even be a Chapter 11, I have no motion to convert to Chapter 7. I've never received such a motion. I won't entertain such a motion on an oral basis. It needs to be made and made on notice. So nobody has asked me to convert to Chapter 7. And you may be unhappy with how long it's taking, etcetera, but we are where we are. I can't change the past.

The real issue here is as to what I'm being asked to do today in terms of the proposed agreement, I don't see that issues regarding whether Voyager complied with regulatory requirements. But they don't really make it -- they're not being resolved today in any way. They don't have to be resolved in order to do what I'm being asked to approve today, and therefore I don't see that they are really relevant to what I'm being asked to approve today.

That may be relevant at the confirmation hearing in terms of not so much releases of Voyager, but releases of officers or directors. And you may have other issues about confirmation as to whether confirmation is appropriate or whether Creditors will be getting at least what they would get in a Chapter 7. You can raise those at the confirmation hearing, but those aren't issues for today. Okay?

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MR. HENDERSHOTT: Yes, sir. Thank you.

THE COURT: Sure.

MR. HENDERSHOTT: So the potential that there has been wrongdoing from multiple regulatory bodies I think calls into question, you know, the assertions of due diligence and risk management that we have heard from, again, both parties' counsel. They fall on deaf ears with us. The same level of due diligence and risk management that brought us to this APA being approved today is from the same organization that brought us to bankruptcy to begin with. It's due to faulty risk management and due diligence. It's the same organization that brought us to a FTX solution.

WOMAN: Hi, pick up for Erica (Indiscernible). It's S-C-Y.

THE COURT: Whoever just spoke, please mute -- please mute your telephone whoever just interrupted and only unmute your phone if you're actively speaking.

I'm sorry you were interrupted. Go ahead.

MR. HENDERSHOTT: Thank you, sir. I think, you know, both of those are relevant to whether this APA that is originating from the Debtors that put us in these situations repeatedly. And looking to possibly do it a second time. There's real concerns with finance both from -- they also are facing red flags from national level and state level.

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conclusion, they have the right to do that at the confirmation hearing. I've heard and understand that there are people who are skeptical who don't trust the Debtors and the Debtors' calculations anymore. That's not really evidence for me. I need somebody, if they think that that's wrong, can actually show me why it's wrong. And people will have the opportunity to do that. People -- customers also, I understand, are upset that things and recoveries aren't going to be as good as they would prefer. But we can only do what we can do today.

As I said, we can't change the past. We can't change the fact that cryptocurrency values have fallen. That's out of our control. And we can just do the best with the situation that we actually have, okay? So --

MR. HENDERSHOTT: Yes.

THE COURT: -- the various objections that were filed also said that -- also raised questions about whether Voyager could transfer licenses, but it seems clear to me that Voyager is not proposing to transfer any licenses to Binance. So I don't really see that that's an issue unless somebody disagrees. Okay.

MR. JONES: Your Honor, James Jones, Creditor. I've just got a couple of questions if you don't mind, Your Honor.

THE COURT: Are they about the issue that I just

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They -- the counsel for the Debtors earlier said -- they talked about a bank run.

If you look online, the parent company of Binance U.S. has actually been in a bank run for the last couple of weeks in the billions of dollars across, you know, multiple financial sources. I think there is relevancy, Your Honor, and I appreciate you providing the governance of, you know, court proceeding of policies. I'm certain an amateur, as most of us Creditors are, and thank you.

THE COURT: You know, I understand throughout the case that many of the Creditors have been angry at what happened to Voyager, have been critical of management and of things that happened. To make clear my perspective today, and more importantly my perspective at confirmation, is in part going to be based on I can't change things that have already happened. And the question is what does it make sense to do today.

So the Debtors and the committee have offered their opinions and their expert opinions that doing this particular transaction will have tax benefits for the Voyager customers, and will also -- because of operational issues, be less expensive, and on the whole produce bigger recoveries than a direct liquidation by the Debtors or a conversion to Chapter 7.

So if any Creditor takes issue with that

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raised?

MR. JONES: It's about Binance.

THE COURT: Well --

MR. JONES: Yeah, so if Creditors' assets were transferred to Binance, what protections would there be if Binance went under? And if Creditors didn't pool the assets, would he fallback -- or Creditors did pool the assets, would the fallback be enacted on those Creditors' assets?

THE COURT: See, I didn't hear your question, all of it, but I think you asked if Binance went under, what would your rights be. That's actually one of the questions --

MR. JONES: Yeah. The fallback

THE COURT: That's one of the questions that I was asking the parties.

MR. JONES: Yeah.

THE COURT: What the parties have said -- I have no independent way of knowing this, but what -- the answers that I've gotten today from both Binance and from Mr. Tichenor based on his review is that unlike Voyager, Binance takes the position that it holds cryptocurrency as a custodian with the beneficial ownership belonging to the customers.

MR. JONES: Your Honor --

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1 THE COURT: Whereas the Voyager --

2 MR. JONES: Your Honor, Your Honor, FTX had the

3 same language in their terms of service also.

4 THE COURT: Right.

5 MR. JONES: So I mean, they don't -- I mean, it

6 don't matter.

7 THE COURT: Well, what would you have me do?

8 MR. JONES: I mean, label all Creditors as the

9 secured Creditors for one, maybe. So they're -- in case

10 they go down, we're not going to get screwed over, you know?

11 THE COURT: I don't think I have the power to say

12 that you will be a secured Creditor of Binance.

13 MR. JONES: What about --

14 THE COURT: You certainly don't --

15 MR. JONES: What if (indiscernible) --

16 THE COURT: You certainly --

17 MR. JONES: -- and (indiscernible)?

18 THE COURT: You certainly don't have to go through

19 Binance. You don't have to open a Binance account.

20 MR. JONES: I understand that, but that's a

21 (indiscernible) if we get liquidated from Voyager.

22 THE COURT: Right.

23 MR. JONES: We just want protection from fallback,

24 you know, in case Binance goes under. Thank you, Your

25 Honor.

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1 third-party survey sent out via Survey Monkey, you know,

2 with some controls to try to limit, you know, repeat

3 responders, you know, from trying to skew the outcomes.

4 It's over 95 percent of Creditors that feel the UCC

5 committee does not represent us.

6 MR. JONES: Well, we appreciate (indiscernible) --

7 THE COURT: Well, if that's true, then perhaps

8 that'll be reflected in the vote on the plan. And if you

9 think that Creditors would do better by just having the

10 toggle plan and having Voyager attempt to make

11 distributions, or if you think Creditors would do better by

12 Chapter 7, then you need to organize yourselves and present

13 me with those arguments. But I can't -- the mere fact that

14 you feel in a kind of conclusory way that you have a

15 grievance or that you don't like the conclusions that people

16 have reached, I can't really act on that. I need evidence,

17 I need argument, I need (indiscernible).

18 MR. JONES: Your Honor, and we do not want

19 McDermott and UCC to control the \$60 million wind-down

20 trust. We don't trust them to be responsible. They spent

21 \$7 million on investigating -- in investigations, and they

22 got a \$1.2 million fallback from Steve Ulrich. You know,

23 that's a negative.

24 THE COURT: Then if you don't want them to have

25 control of a trust, you should make that objection, and I'll

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1 THE COURT: All right. I understand the question.

2 That seems to me I've been given some assurances today about

3 how this works. The only thing I'm approving today is

4 essentially a potential expense reimbursement and provisions

5 regarding the extent to which Voyager can negotiate with

6 other people in the interim. You should raise those

7 concerns with the Creditors committee and talk to their

8 counsel about them and try to understand --

9 MR. JONES: Sir, we've --

10 THE COURT: -- what they're thinking.

11 MR. JONES: We have raised millions of questions

12 with the Unsecured Creditors Committee, and they are inept.

13 They're not helpful, and we (indiscernible) --

14 MR. HENDERSHOTT: The Creditors Committee does not

15 represent us.

16 MR. JONES: What was that?

17 MR. HENDERSHOTT: This is Tracy Hendershott. The

18 Creditors Committee does not represent us.

19 MR. JONES: Yeah, go ahead. Yeah, go on.

20 MR. HENDERSHOTT: They have actually withheld

21 information from the court in, you know, previous hearings

22 from the Creditors' Committees. They have, you know, failed

23 to, you know, have any kind of resemblance of, you know,

24 bidirectional communications with us. If you look at your

25 docket, Your Honor, and you know, 843, you know, there was a

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1 consider it at the confirmation.

2 MR. JONES: All right. Thank you, Your Honor.

3 THE COURT: Okay.

4 MR. HENDERSHOTT: Your Honor, we do --

5 MS. OKIKE: Your Honor?

6 MR. HENDERSHOTT: -- I have submitted

7 documentation and evidence on Docket 843, you know, if you

8 have the ability to have yourself or someone in chambers

9 review that. That would be greatly appreciated.

10 THE COURT: And what is this that you're asking me

11 to review?

12 MR. HENDERSHOTT: You asked to submit a formal

13 request in writing that oral argument is not, you know,

14 persuasive enough for you.

15 THE COURT: And are you referring to the --

16 MR. HENDERSHOTT: And that's already been

17 submitted.

18 THE COURT: Well, but you submitted a letter on --

19 yesterday, right? Or the day before?

20 MR. HENDERSHOTT: Yeah, I think it was late last

21 week. That's why I understand if you haven't been able to

22 review it, but you know, just (indiscernible).

23 THE COURT: No, I saw it. It's not -- it's a

24 letter. It's not a proper motion. If you want a motion or

25 particular relief, you have to make a motion. You have to

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do it in compliance with the rules and with the proper notice to other parties, give them a chance to respond, and then I'll hear it. But just sending me a letter a few days before the hearing is not enough for me to consider it at this scheduled hearing, okay?

MR. HENDERSHOTT: Yes, understand. I --

THE COURT: Okay.

MR. HENDERSHOTT: Is my understanding, Your Honor, that you do have the authority to convert from Chapter 11 to 7?

THE COURT: Well, if -- under the bankruptcy code I have the power to do that if the correct showings are made. But you'd have to -- I can't give you legal advice. You'd have to consult with an attorney as to what those standards are and as to whether you can show that the right standards are met so that such a conversion would be appropriate.

MR. HENDERSHOTT: Yes, sir. Thank you.

THE COURT: Okay. All right. As to the Binance compliance with regulatory issues, perhaps the identity of Binance, its finances, all that Creditors have expressed concerns about, which seem to me to be confirmation issues, I don't -- it seems to me that whether Binance will or won't be in compliance with regulations and therefore will or won't be able to have accounts with customers is an issue

change that's simply attributable to the fact that there are different regulations and different authorities who have control in different jurisdictions.

But there are times in bankruptcy when customers have different treatments in different states or have different net outcomes in different states just because of state regulations. And you know, the basic fact is that customers in different states face different tax consequences based on distributions that they receive. And those are never understood as amounting to discriminations by the Debtor. It just has to do with the fact that there are different states that have different rules and different consequences.

And it could be that some Creditors will have their rights to crypto determined at a particular time, but not -- may not actually have the ability to get to it at the same time. So that by the time they actually have the right to make decisions over it, the values may have gone up or may have gone down. Again, I'll hear people at confirmation as to whether this makes sense, but it's not a show stopper for me to stop the proposal for me even going forward.

It is often the case. I remember in the American Airlines case, for example, where Creditors received equity shares in the combined American Airlines/U.S. Air entity. And under the plan, some people received their equity right

for Binance. But under this particular proposal, if Binance can't have a customer -- or an account relationship with a customer, then it just won't have that customer, and that Creditor will just get a cash payment as I understand it.

So I don't really see why the regulatory compliance is an issue that I'm resolving today or prejudicing today, or that necessarily is going to be an issue except possibly at confirmation as to whether it makes sense to go through Binance to do this deal. Does anybody disagree with that? And if so, why? All right. Very good.

And then the main issue that the states have raised is whether customers in different jurisdictions are unfairly being treated differently. There's some suggestion today that maybe there will be a mechanism that will allow earlier distributions to Creditors in the unsupported dates. And if that can be worked out, that would obviously be a wonderful solution.

I don't really think that the fact that the Debtors and Binance are allowed to do things in some states but not others is a discrimination under the plan itself that is so obvious or so severe that I should prevent even the disclosure statement from going out. I will hear the issue at confirmation, and I'll hear evidence at that time as to what the practical options are and whether this is a discrimination being imposed by the plan as opposed to a

away. Some people didn't receive it until disputes over their claims were resolved. People received the same amount of equity, but it being equity, the value fluctuated significantly over time so that the actual value at the time somebody got it might have been higher, might have been lower than what it was at an earlier period of time.

But nobody thought that meant that there was an impermissible discrimination among Creditors because they all got the same amount of equity, and there was simply no way to determine how much somebody would get until disputes over the claims were resolved. So you know, if there are still issues about this, I really hope that the states and regulators will work with Voyager and Binance about this, and everybody will have an open mind and be able to address this. But I'm not convinced that there is a kind of per se unconfirmable plan here in that regard.

Nothing I'm saying today is a final determination of that issue, but I don't see that it's a show stopper of the disclosure statement stage. It's also unclear to me what -- let's say that Voyager can't make distributions in the unsupported states and that the unsupported states regulators think that that's -- it's not fair for other Creditors to be able to get things when Creditors in New York and Vermont and Texas can't.

What's the consequence? Does that mean everybody

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has to wait, and that nobody can get anything until whenever New York and Vermont can get anything? And how would that be in the interest of Creditors generally? I'm not sure how the proposed discrimination would really be solved in a way that would satisfy the technical aspects of the objection without in effect being prejudicial to many, many other Creditors. But again, we can consider that issue at confirmation. So --

MS. CORDRY: Your Honor, this is Karen Cordry. If I might just make just one very quick comment or so on that?

THE COURT: Yes, go ahead.

MS. CORDRY: Okay. Yes. And we do understand, and we are certainly not, despite what the Debtor was trying to suggest, trying to hold up distributions to everyone. I think our concern was simply that -- and I think you heard admitted very candidly on the record that this is a marketing technique, that this is what Binance wants in order to throw in some more money.

We do think that there are a number of ways this could be resolved which would have a less prejudicial effect on those parties. Even without dealing with the kind of provisional licensing or court orders or any of the other kinds of suggestions were made. I mean, if nothing else, they could be cashed out without being held for six months. That's a marketing technique for Binance, and we understand

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But in many of the Debtors' pleadings, they've stated this is a mess of the states' own making, and it's our fault if our citizens don't get paid, and that is not correct. For the record, Binance is using our citizens as pawns to get what they could not get under state law, a license from the Department of Banking. As of December 2022, their application was abandoned for their failure to submit financial information requested by the Department of Banking, and now they're coming into this deal saying, oh, but you can provisionally license us. Well, we don't have comfort with their financials because they've refused to give them to us.

And I think it's extremely disingenuous to say this is a creation of the states' own making when it clearly is not. Binance is not able to get licensed under state law for failure to produce financial information. And if they present another application to the Department of Banking State Securities Board, they absolutely will consider it. They will ask for similar financial information, but this is not the States' fault, and we don't like seeing our citizens used as pawns for Binance to try to do an end run around regulators. Thank you, Your Honor.

MR. GOLDBERG: Your Honor, this is --

MS. ROOD: Your Honor, Jennifer Rood from Vermont. I would echo everything Ms. Ryan said. And it really is not

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why they want to do it.

It is something that's only worth about \$2 million in the context of this entire case. So it's a bit of a tail-wagging a very big dog, but we will continue to work with the Debtor and with Binance. We will see if we can resolve this issue. I think it is something that if they had approached us long before, we might've been able to do this before confirmation, but I certainly -- or before this stage of this disclosure statement hearing. We certainly do understand your point about wanting to keep the case moving along, so that's all I have to say at this point. Thank you.

THE COURT: All right. So we would all be very happy if that issue can be worked out, and I encourage you to try to work it out. There was some --

MS. RYAN: Your Honor?

THE COURT: Yeah.

MS. RYAN: I'm sorry. This is Abigail Ryan with the Texas Attorney General's Office, and I do want to make one comment. For the record regarding the treatment of the citizens in the non-consenting jurisdictions, and I agree this will be a confirmation issue if we don't get a new treatment agreed to with the Debtors and Binance, which I'm more than happy to work with them to try to find a better resolution.

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-- and also to the Court's point that somehow, you know, improving the treatment of our citizens will have a -- you know, adverse consequences on everyone else, that doesn't have to happen. All they have to do is show a little willingness to set up a -- withdraw only one other or some other slightly creative solution that would put everybody in the same situation and not create this unnecessary inequity, you know, just because Binance wants to get these customers and can't.

And it's not the states' obligation to, you know, get Binance through the licensing process. They need to submit proper applications with proper support. If they haven't done that, then there are reasons why they were licensed. So I really would urge the Court to give that careful consideration. I'd hate to see this case get sent down a track that it's going to be hard to change.

MR. GOLDBERG: Your Honor, this is Adam Goldberg of Latham and Watkins on behalf of Binance U.S. I'd like to just make clear first and foremost that Binance U.S.'s goal here is to return cryptocurrency to customers as quickly as possible, and that's been our objective throughout this process and what we believe our bid does and what we're trying to achieve by working with the Debtors to -- and the Creditors Committee to seek the relief that we're all seeking here today.

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We'd also like to be clear that we are grateful to the Debtors, the Creditors Committee, all of the parties in this case, including all of the state regulators here, including the objectors, and especially the Court for all the time and attention that everyone's putting into these novel and challenging issues that are put before the Court. We have nearly two months before the confirmation hearing, which in the context of this case is quite a lot of time. In just the last two months, the parties in this case have worked together to salvage the situation from the collapse of FTX to the -- where we stand here today with a new deal to deliver cryptocurrency to customers in a very rapid and efficient format.

And over the next two months, we have much fewer issues than we have had over the last two months to resolve. We look forward to working with everyone in an effort to see if those issues can be brought to a mutually acceptable solution, and hope to work towards that. And we are grateful again for everyone's attention to these issues.

I'd like to be clear, though, in relation to the remarks from the State of Texas that Binance has been working very -- has been working to engage with the State of Texas and will continue to do so. I think from our perspective, Binance U.S. would say that they have not received the responses that they're looking for on clarity

have, you know, clearly made, today is really just a conditional approval of the disclosure statement with a reservation to be heard further at the final hearing once we go through all the materials in chief. And of course, I just want to point out that the disclosure statement, as Your Honor has indicated, it's wholly separate from the confirmation hearing. The Bureau has concerns regarding the suitability of Binance U.S. as a counterparty, but that's for another day.

And we are concerned that the customers don't, in the long run, end off in a worse position than they are now. That's what the Bureau is concerned about, and we'll address those at the confirmation hearing or, you know, in some other fashion. But thank you for your time today, Your Honor.

THE COURT: Very good. Anybody else?

MS. PROVINO: Yes, Your Honor. This is Lisa Provino. I've been waiting patiently. I had a three-point, please, and there will be some questions. I wanted to tag -- because I've waiting to make a comment, on Richard -- Mr. Richard Morrissey the U.S. Trustee. He made a comment about the Voyager privacy, and I am in support of that. I think that it is a nominal fee, and I am going to stress that some -- I can't say for all Creditors, but I do think that we would appreciate the privacy being looked at that he

on what needs to be done for the license. And if resubmission of the license is required, that will be done, and we're actively working to achieve regulatory compliance in all of these states.

THE COURT: All right.

MR. GOLDBERG: Thank you, Your Honor.

THE COURT: Okay. I think that takes care of the states' objections as to today. Obviously they remain as potential confirmation objections, but I don't think they are, as I said, things that require me to kind of halt the proceedings today and to decide that things are irretrievably faulty, and I shouldn't even let them (indiscernible) forward. So is there anything else anybody wishes to say on behalf of the various objections made by the State Regulatory Authority?

MR. BERNSTEIN: Your Honor, this is Jeffrey Bernstein, McElroy Deutsch Mulvaney and Carpenter for the New Jersey Bureau of Securities. It's been a long afternoon. I'd like to just take one moment to make a statement. We engaged with the Debtor as they had made many changes to the disclosure statement in their Sunday evening filing. And we were glad that they did that in a productive way. There's a significant amount of materials that had to be reviewed.

And of course I think as Your Honor and others

discussed.

The second question and point, you know, point I have is you had mentioned or Mr. Okike -- forgive me if I said that wrong -- she mentioned about a toggle plan, and it was discussed today also by one of the unsecured Creditors as well Tracy Hendershott. You mentioned about the going from Chapter 11 to Chapter 7, and you mentioned that the motion must be done legally and in time. And our question is since we don't have an attorney, can we work with the Office of U.S. Trustee or do we do it ourselves as a group. There is a group of us that want to understand, and we don't want a further loss as all of these bankings of Vermont and the lady Ms. Abigail Ryan, she had discussed.

We don't want Binance to go down the same (indiscernible) that FTX did. So what I'm getting back to is, what will you allow us to do in order to do the motion since we are not attorneys? What will you allow us to do to either ask the questions that -- to initiate or to request a motion for the 11 to 7, or to understand Ms. Okike's toggle plan third option? And I still am unclear -- the question -- I am unclear about the toggle plan. She goes too fast for me, and I don't understand it, and I would like to understand it. Thank you, sir.

THE COURT: If you wish to make a motion, and if there's a group of you, I strongly encourage you to consult

with an attorney because you have to understand the bankruptcy code provisions, the rule provisions regarding notice, and you have to comply with those. And so I strongly urge you to do that. I can't -- as the judge, I can't give you legal advice about how to make your motion. I hope you understand that. I don't think you (indiscernible) --

MS. PROVINO: I know. I'm not trying to be rude.

THE COURT: Yeah. I don't think the U.S. Trustee can do that either. There are rules, there are code provisions that govern these things. At a minimum, if you ask for relief, you need to make a request for that. File a paper that makes that request and serve it. The Debtors have a service list that they can give you, but you -- in order to -- if you really want to do that, you should do it the right way, and you should do it with the appropriate citations and things like that.

So it's definitely best for you to consult with counsel. If you don't have counsel, you at a minimum have to file a request for relief with an -- and call my chambers to get a hearing date and get the service list from the Debtors so that you can serve your request. Okay?

MS. PROVINO: And we will do that, Your Honor.

And I appreciate you explaining to us. We are trying very hard to find our avenue and our voice. Because even if we

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having to kind of reinitiate the process. So what it provides us to do is to solicit votes on the plan. And if for whatever reason we aren't able to consummate the Binance U.S. transaction, it would allow us to, you know, reopen the platform for a limited period of time and make distributions of the crypto and cash that the company has.

MS. PROVINO: So could I ask you a follow-up question, ma'am, please, about what you just stated?

MS. OKIKE: Yes.

MS. PROVINO: I want to know -- okay. So what I thought I heard you say is that if Binance is not accepted, meaning this plan is not accepted by all of these wonderful professionals that are on the line, then you would say that the third option would be to basically cash us out. Did I understand that in layman's terms?

MS. OKIKE: Yeah. So it's a little bit of a distinction between that. So we have one plan of reorganization that provides for the -- provides for two options, right? It provides for the Binance transaction. And assuming that the company still feels that's the highest and best offer at the time that we reach confirmation, then we would move forward with the transaction and distributions would be made as we've talked about through the Binance platform or through Voyager in certain circumstances.

What it does is it allows us to solicit at the

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have thrust, which we have thrust through the NEW, that we wanted a monthly update and stuff of this nature. We don't get the communication the way that we as a group feel we should be getting it.

Should be having maybe a monthly Twitter feed or something where -- and that's where I think the frustration -- and it's not at you or at the group, it's just us bubbling up and finally you're now wanting our voices to be heard, sir. And we're not trying to waste your time. We really do need to be heard. This is our money, and we have lost it. And we are trying very hard to recover whatever we can, and we appreciate your time with that. So I would still like to understand from Ms. Okike what this toggle plan is. Is there Ms. Okike on the line? And can she clarify this toggle plan for me?

MS. OKIKE: Yes, I'm happy to do that. So the plan that we have on file contemplates the Binance U.S. transaction, which we've talked about. But it also builds in an option where we can return crypto and cash on the platform if the Binance transaction for whatever reason is not able to close.

And the reason why we kind of incorporated the two options into the plan is that we want to prevent a situation which occurred with FTX where we didn't have the second option, and obviously the deal fell apart, and now we're

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same time that we're soliciting votes on the Binance transaction, Creditors are also voting for what they would get in the event that we would decide to exercise our fiduciary out and move to the toggle transaction. So when you get a ballot to vote on the plan, you're being asked to approve, you know, everything in the plan, but also what you would get in both of those scenarios. So both the Binance U.S. transaction and the toggle transaction. So if you were to vote no, then you would be voting no against the plan as we have proposed.

MS. PROVINO: Okay. And is there a motion or a document that I can reference and reread this again please? Could you tell me the documentation number so I can go and (indiscernible), please?

MS. OKIKE: Yes. It is the Plan of Reorganization, and we're happy to forward it to you. So you can send me an email and we're happy to kind of send that your way.

MS. PROVINO: I would greatly appreciate that, ma'am. Thank you very much. And thank you, Judge, for your time.

MR. AZMAN: Ms. Provino, it's Darren Azman from McDermott. I don't know if you've seen, but over the last 24 hours we've been putting out a number of updates on Twitter, and we are --

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MS. PROVINO: Yeah.

MR. AZMAN: -- scheduling another town hall to occur sometime next week.

MS. PROVINO: No, we appreciate that, but I guess -- and I'm not trying to attack you. I just -- I am a communications major, and I need more updates from your group. I need a monthly scheduled -- whether it's January 1st, February 1st, March 1st, whatever it is, we are paying a portion of our money and we want a monthly hearing from you. We want to have -- be able to have access to you or to your organization. Please understand this is very vital to us, and we are all talking. Trust me. There are a lot of us that have dissent. Please hear what we're saying and take it into consideration.

If you limit to an hour, we will make sure we have a form in. We will make sure whatever needs to be done is handled appropriately. I'm learning through this process, so -- and I'm sure all of us are, but I mean unsecured Creditors. We've never been through this before. I've never been through bankruptcy in my life, and I don't plan on it. But I would like to understand how to do it the right way. And with your help, I'm asking that you would do that for us. Please.

MR. AZMAN: Sure. Why don't we -- why don't you reach out to me after the hearing today and maybe we can

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in favor of the plan or not, correct?

THE COURT: That's correct.

MR. ABRAHAM: Okay. So with that being said, I would ask from you if there's a way that the vote could be really detailed. Not in length, but really it should specify the options. Because with the previous vote with FTX, people were flocking to YouTube to hear from influencers how they should vote because people weren't given enough accurate information to form their own decision.

Now, for example, one of the attorneys said before that if we got with the Binance deal as of when it was created in December it would be a 51 percent return. I understand it fluctuates based on the crypto market. But as of that day in December, it would've been 51 percent with the Binance deal versus a 45 percent return with the toggle, which is a 6 percent difference. So when they put the vote out there, I understand there's also other things to take into consideration.

For example, if we go through with the Binance deal, you're getting your crypto back in-kind. Whereas if it gets toggled, you don't. But there's -- also on the flip side, there's a risk of what if Binance goes under. So that I think people could decide or read up on their own. But just as far as just the numbers go, I think if it would be

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work on a regularly scheduled call to have? And there's no time limits. The last town hall, which I think you were on, I spoke for three and a half hours, took as many questions as I could.

MS. PROVINO: I know.

MR. AZMAN: But we're happy to try to work on doing that more often.

MS. PROVINO: We have to. Otherwise you're going to get more people on this -- on these meetings that's wasting the judge's time. But I'm telling you we need that. It will calm us down. Right now we're not calm, and we're trying to be calm. And I appreciate that.

THE COURT: All right. Very good. You should work that out with the Committee, counsel, and it sounds like they're willing to work that out with you. (Indiscernible).

MS. PROVINO: And I appreciate that very much.

THE COURT: Okay. To get back as to the various objections --

MR. ABRAHAM: Your Honor?

THE COURT: Yes. Who is this?

MR. ABRAHAM: Hi, Your Honor. It's Mr. Abraham. I'm an unsecured Creditor. I -- my first question is between here and the confirmation hearing there will be the vote for all the unsecured Creditors to vote whether they're

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spelled out that if we go with the Binance deal it's a certain percent, but if we toggle, you're losing 6 percent. At that point, whether it's people who are in states that right now can't accept Binance and have to wait six months, or whether it's people who don't want to take the risk of another company going under, someone can make that determination for themselves. Is it worth the 6 percent? I'd take that risk.

Obviously if it's a 20 percent different spread, then you'll have people more inclined towards a Binance deal. Whereas obviously if there's a one percent difference, everybody would be in favor of the toggle. So all I'm asking is if there's a way that when the next vote comes out that people don't have to go to YouTube to get their information, but that the information that comes out with the vote is a lot more specific so people can make an informed decision on their own.

THE COURT: Well, the information --

MS. OKIKE: I can --

THE COURT: The information will be set forth in a disclosure statement, and that'll be a lengthy document. It's kind of ironic when we get disclosure statements because three-quarters of the objections about -- are about things that -- about which people want more detail, and then one quarter of the objections are that the statement is too

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1 long and hard to read. And we can't have it both ways.

2 MR. ABRAHAM: Right.

3 THE COURT: The statements wind up being lengthy  
4 because there are so many requirements of what need to be in  
5 them, but they're pretty thorough. So people ought to be  
6 able to find what -- the answers that they're looking for  
7 that aren't met. Or to call committee counsel if they have  
8 a question. But --

9 MR. ABRAHAM: I --

10 THE COURT: I won't comment on using YouTube, but  
11 -- the other thing you ask is essentially I think -- I think  
12 what you're essentially saying is that could Creditors vote  
13 separately as to whether they prefer the toggle or the  
14 finance deal. That's what you're asking.

15 MR. ABRAHAM: Well, from what I just heard a few  
16 minutes ago, it seemed like if the vote did not go in favor  
17 of the Binance deal, it would automatically revert to the  
18 toggle.

19 THE COURT: Well, I think the way it's set up --

20 MR. ABRAHAM: Did I not understand that correctly?

21 THE COURT: No. Yeah, I think that's not right.  
22 I think the way the plan is set up right now it will be the  
23 Binance deal, but the Debtors would have the right if they  
24 think it makes more sense to go to the toggle deal. But --

25 MR. ABRAHAM: Right. I understand that.

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1 happens by default? I mean, I understand it's not Binance  
2 or toggle, but if the majority doesn't vote in favor, isn't  
3 toggle the alternative?

4 THE COURT: It would require a new plan that would  
5 have the toggle provisions in it. Because if  
6 (indiscernible) --

7 MR. ABRAHAM: Because the language says if the  
8 Binance -- sorry, go ahead.

9 THE COURT: Yeah. This proposal as it's currently  
10 structured, Creditors would have to vote in favor, and the  
11 toggle would only come if the Debtors decide that that makes  
12 more sense than Binance. If Creditors vote no but then we  
13 have no plan unless and until a new plan is proposed, which  
14 at that point might be the toggle, might be a Chapter 7  
15 liquidation. I don't know what it would be, but it's -- as  
16 it's currently set up, we do not have a situation where you  
17 could directly to the toggle and Creditors could vote down  
18 doing it through Binance. It's not the way it's set up  
19 right now.

20 So the question I understand from this comment,  
21 Ms. Okike, is whether there's a way to structure this so  
22 that Creditors could express their opinion as to which they  
23 prefer and possibly avoid having to do this through a  
24 separate process. What's your comment on that?

25 MS. OKIKE: Yeah, Your Honor, I think from our

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1 THE COURT: -- (indiscernible) --

2 MR. ABRAHAM: But what is a majority --

3 THE COURT: It's not being set up --

4 MR. ABRAHAM: I'm sorry. Go ahead.

5 THE COURT: -- (indiscernible). I don't think it  
6 is currently being set up to ask Creditors whether they  
7 would prefer the toggle deal as opposed to the Binance deal.  
8 I'm right about that, Ms. --

9 MR. ABRAHAM: Right.

10 THE COURT: -- Okike?

11 MR. ABRAHAM: I understand --

12 MS. OKIKE: Yes, Your Honor. That's correct.

13 THE COURT: So --

14 MR. ABRAHAM: Right. I understand that --

15 THE COURT: If the question --

16 MR. ABRAHAM: -- but what if the majority --

17 THE COURT: Yeah, if the question is, is there any  
18 way to even know whether the Creditors would -- the majority  
19 would prefer the toggle deal or should that opinion be  
20 solicited as part of the voting process. What's your  
21 thought on that, Ms. Okike?

22 MR. ABRAHAM: Well, if -- with what you just  
23 explained, what's -- what would -- what's the outcome if the  
24 majority of unsecured Creditors vote not in favor of the  
25 deal? What's the default -- what happens then? What

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1 perspective we've evaluated all of the options on the table.  
2 We've evaluated the Binance U.S. transaction. We've  
3 evaluated the toggle transaction. We've evaluated, you  
4 know, a straight liquidation. And from our perspective, the  
5 Binance U.S. transaction provides the most value and  
6 maximizes value for customers for all the reasons that we've  
7 discussed today.

8 And so the plan that we've put forward presumes  
9 that we're moving forward with the Binance transaction  
10 because that's what is the most value-maximizing option.  
11 We've obviously built in the protection that in the event  
12 we're not able to close the transaction or somebody else  
13 shows up, you know, that we can, you know, pivot to the  
14 toggle. But I think from our view of the available options  
15 and our evaluation of the value, I think we're soliciting  
16 the plan that we believe, you know, provides the most return  
17 and recoveries to customers.

18 MR. HENDERSHOTT: Ms. Okike, this is Tracy  
19 Hendershott. I believe we've covered here today that  
20 there's considerable concern, though, from the Creditor  
21 class. Would it not be beneficial to present that option to  
22 us as two distinct voting pathways to go to a toggle versus  
23 being handed off to Binance?

24 MS. PROVINO: I second that. This is Lisa.

25 MR. HENDERSHOTT: Is this not supposed to be for

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the benefit of the Creditors and not the Debtors?

MR. JONES: Because if it's not, what's the point of the vote? If no one knows what the alternative is, even the judge --

THE COURT: Let's not --

MR. JONES: -- just said -- the --

THE COURT: Let's not --

MR. JONES: -- judge just said himself that we don't have a plan.

THE COURT: Let's not have a free-for-all.

MR. JONES: No, I'm --

THE COURT: You may just ask. That's the question. Did the Debtors wish to prevent -- present the proposal that way? And what's the Committee's view at the same time? That question. Ms. Okike, are you willing to present it that way, or do you want to do it as was currently structured? And what's the Committee view?

MS. OKIKE: Your Honor, our view is that we'd like to do it as currently structured. Again, I think there's some misconceptions about the toggle and the value of the toggle. We believe that there's, you know, potentially over 100 million of value leakage in that scenario, and so we don't believe it's value-maximizing.

And while we understand the concerns that have been expressed with respect to the transaction, we think

-- may not understand the full import of this other option.

We don't look to impose on Creditors something that they don't want, but this is what we think is in the best interest of all the Creditors. And a lot of homework was done to develop this plan.

THE COURT: Okay. Let me just say in response to the question that was asked, the way the bankruptcy code is set up, the Debtors have the exclusive right to make a proposal, which is then voted on for Creditors. I don't really have the authority to tell them what their proposal should be or to require them to change it, nor does the Committee. Although their views might carry some weight. But I have no power to tell them to give Creditors this kind of option that you're suggesting.

The issue when the Debtors make a proposal is whether Creditors accept it, and then for me, whether it complies with certain other technical provisions of the bankruptcy code. But I -- they have the right to make their proposal, and this is the way they wish to structure it. So given that that's what has been presented, the only option Creditors will have was either to say yes or no. Okay?

MR. ABRAHAM: Your Honor, I have a question as it relates to the fair and equitable treatment for Ms. Okike. If I may.

THE COURT: Well, do you have an objection? You

we've built in the protection that people who don't want to join Binance don't have to join Binance, and we'll be able to access their recoveries. And so from our perspective in our business judgment, we're moving forward with the transaction that we believe maximizes value for Creditors. And so from our perspective, you know, I don't -- we're not willing at this point to try to modify the plan. You know, it's obviously in our discretion. We have exclusivity and we've put forward the plan that we believe is in the best interest of the estates.

THE COURT: And let me hear the Committee counsel's view on this.

MR. AZMAN: Your Honor, Darren Azman from McDermott for the Committee. I think optionality is sometimes a great thing. My concern here is that the Committee as well as the Debtors, a lot of labor has gone into evaluating what a self-liquidation would look like. And we as the professionals understand the cost and the time that would be involved in that. Some of it came out through testimony today from Mr. Tichenor.

For example, there is a significant amount of coins in value that would not be easily distributable from the estate. And my concern about including an option like this is that a number of Creditors -- there are a million customers let's remember, it's not just 50 or 100 or 1,000

know, if you have a question, you should do it not in the middle of the court hearing. I don't want to turn this into a town hall. It's a court hearing to consider whether certain relief should be granted. Okay?

MR. ABRAHAM: I do believe in terms of fair and equitable treatment under Section 1123-84 as Ms. Okike stated, this warrants consideration whether to confirm the plan or not. My question relates to VGX.

THE COURT: The question relates to what?

MR. ABRAHAM: VGX. The native utility token of the exchange or the brokerage.

THE COURT: VGX?

MR. ABRAHAM: Yes, sir.

THE COURT: My understanding under the plan is that VGX may or may not wind up being supported by Binance depending on what Binance decides to do. So what is your question about that?

MR. ABRAHAM: Well, that's it. Ms. Okike stated that substantially all cryptocurrency, but it would be transferred. They have acknowledged that Binance has agreed to submit that the process of listing VGX. But my understanding is that means they're determining whether or not to list the token, not that they will list the token. What happens if Binance decides not to list the token? And would that be considered fair and equitable treatment? More

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specifically, that the members of the same class have the opportunity to take the same action as she stated under the Bankruptcy Law Section 1123.84. And does that impact the confirmation of the sale or not.

MS. OKIKE: Your Honor, I'm happy to address that. So the transaction contemplates that VGX would transfer similar to all other tokens to Binance. There is a question whether Binance would be able to list the token on the platform, and they've agreed to kind of undertake that internal review process. But you will get your pro rata distribution of BGX, and you will be able to withdraw it from the Binance platform regardless of whether they determine to list the token or not on the exchange, and you will be getting your pro rata value determined at the time of the rebalancing exercise.

In addition, I think it's important to note that the actual VGO -- VGX smart contracts are not being acquired by Binance. And so we're going to continue to work with third parties in an effort to identify a solution for supporting the utility of VGX, you know, post-sale.

MR. ABRAHAM: Thank you for the explanation. And Your Honor, thank you for entertaining unsecured Creditors' concerns and opinions today. I think that it's evidence that the UCC and her lawyers have -- you know, have opportunity to interact with the Creditors, and I appreciate

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shortcutting or proposing to bypass any CFI U.S. reviews or approvals. Does anybody else want to be heard about that or have anything else to say on those issues?

MR. MORRISSEY: Your Honor, Richard Morrissey for the U.S. Trustee. On the Paul Hastings issue, the provision that we had a problem with, I believe it was at least the former Section 5.8 of the Asset Purchase Agreement has been deleted. That's what we asked for in our objection. So as far as the U.S. Trustee is concerned, that's no longer an issue. Thank you.

THE COURT: All right. And I don't hear any comment on the CFI U.S. issue. I think -- I understand that the Oracle objection is resolved?

MS. OKIKE: That's correct, Your Honor.

THE COURT: The agreement says that the purchaser can modify the lists of assumed and assigned contracts up to five days before closing, but this seems to be a persistent issue that I get in Chapter 11. The buyer wants flexibility, and yet the procedures that are proposed to me all require objections by parties -- the other parties to these contracts that wind up being before -- specified as dates that are before the decision is even made as to what the contract is to be assumed and assigned.

So, however you're going to do this, however much time you're going to allow Binance to do it, you have to say

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the opportunity for us to initiate that today. Thank you.

THE COURT: Okay. To move on as to other issues, there's a proposal in the plan and in the documents to be sent to Creditors to -- by which Creditors would contribute their direct claims to a trust. I know I had issues about this in -- when a similar proposal was made as to FTX, and I think it's been clarified that none of the claims that are being attributed would be claims that would just wind up being released as a result of being contributed.

But I'm still concerned that I don't think it's sufficiently clear in what's being told to Creditors here that if they submit their claims to this trust that any recoveries on those claims will go to claims generally and not just to the -- for the benefit of the people who have contributed claims. I think Creditors need to understand that, and I don't think that's clear enough in what's here. That needs to be in the disclosure statement and in the ballot provisions that ask Creditors whether they wish to do that. Okay?

MS. OKIKE: Understood, Your Honor. We will make that change.

THE COURT: I think the Paul Hastings and CFI U.S. issues are really non-issues for today. The provisions about Paul Hastings have been removed, and everybody's making clear I think that nothing's interfering with or

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how that's going to work, what amount of notice those people are going to get, and what kind of objections they can make. So if there's going to be a deadline for people to make objections to assumption or rejection, then the decision as to whether they're being proposed for assumption and rejection has to be reasonably in advance of that date.

Unless you want to say that people who are -- where the decision is made after that date will have a specified amount of time to object with the idea that if I -- if they object and if I decide in their favor, then the contract doesn't get assumed, but the whole deal isn't being held up in the meantime. Whatever you're going to do, you can't just have these provisions that don't really mesh together, okay?

MS. OKIKE: Understood, Your Honor. We'll clarify that.

THE COURT: Okay. On the Alameda objection, I was a little confused as to who the parties to the loan were. And part of it is as I understand the papers, (Indiscernible) Holdings was named as the borrower and the company we've referred to as Top Co. was named as the guarantor. The plan definition in definition Paragraph 18 describes it as holdings -- Hold Co. as the borrower and Voyager as the guarantor. But the definition of Voyager is defined as Top Co. and its direct and indirect affiliates.

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1 Was anybody other than Top Co. named as the guarantor?

2 MS. OKIKE: Your Honor, the borrower is Hold Co.,  
3 and the guarantor is Top Co. I believe that's a  
4 clarification we need to make in the definition.

5 THE COURT: Okay. Very good. So in the -- as to  
6 the proposed equitable subordination, I think Alameda was  
7 right as to the original wording of the plan. Because while  
8 the response was that the claims would be treated as  
9 unsecured Creditor claims if subordination was denied, the  
10 plan didn't say that, although I think it's been modified  
11 either last night or this morning so that actually says  
12 that.

13 As to the arguments about absolute priority and  
14 things like that, I think what that effectively means is  
15 that there's no subordination unless I rule that  
16 subordination is appropriate. Is there any remaining  
17 objection on that particular issue?

18 MS. OKIKE: No, Your Honor. I believe we've  
19 resolved Alameda's objection for purposes of the disclosure  
20 statement.

21 THE COURT: Okay. All right. And does Alameda  
22 agree with that? Is there any remaining issue?

23 MR. GLUECKSTEIN: Good afternoon, Your Honor.  
24 This is Brian Gluckstein for Alameda. We agree for  
25 purposes of today with the modifications that have been made

1 where the market is right now, maybe a 57 percent  
2 distribution. I think the parties should understand that it  
3 could also be considerably less than that depending on how  
4 things turn out.

5 With respect to the Alameda claim, I believe that  
6 if the Debtor -- the disclosure statement does say that if  
7 the equitable subordination does not work out in the  
8 Debtor's favor, then the claim -- then the distribution  
9 would not be 51 or 57 percent, but it would be an estimated 26  
10 percent.

11 The other issue out there, Your Honor, involves  
12 intercompany transfers. And there's a question as to  
13 whether certain transfers would be characterized as capital  
14 contributions or loans. That could also make a difference.  
15 The outcome of that could also make a difference in terms of  
16 what the parties are going to get under the plan.

17 So although in the chart there are a couple of  
18 scenarios for distribution, and I'm referring to a chart in  
19 the disclosure statement, the scenario being, for example,  
20 if the plan is accepted with the APA with finance is going  
21 to be one thing. And if it's going to be the toggle plan,  
22 it's going to be something else. And if it's going to be  
23 conversion, it's going to be something else.

24 But there are other alternatives also that the  
25 Creditors should be made aware of, and I think it should be

1 that the objection is resolved on those issues.

2 THE COURT: Okay. I have a few questions and  
3 comments about the proposed orders, but before I go there,  
4 are there any other issues and objections that have been set  
5 forth that we haven't addressed and that people wish to  
6 raise and that we need to discuss?

7 MR. MORRISSEY: Your Honor, Richard Morrissey for  
8 the U.S. Trustee. If I could raise a couple of issues?

9 THE COURT: Okay.

10 MR. MORRISSEY: Thank you, Your Honor. I wanted  
11 to make a point about the ballots, Your Honor. Although  
12 obviously plan issues are to be dealt with later, ballots  
13 are to be issued -- to be dealt with now. I just wanted to  
14 explain to the Court and to the parties on the phone that  
15 there's going to be a tabulation of ballots. And I believe  
16 Debtors have agreed that it won't be just a tabulation with  
17 respect to the votes to accept or reject the plan itself,  
18 but also the results of the vote on releases.

19 There's an opt-in provision on the ballots, if  
20 parties have had a chance to review those, and there will be  
21 a tabulation of results regarding the third-party releases  
22 as well as the vote on the plan itself.

23 Your Honor, touching on the Alameda claim that was  
24 just discussed, Ms. Okike said earlier on that there should  
25 be hopefully a 51 percent distribution. Although given

1 clear. I don't think that the Debtors wanted to put those  
2 scenarios in the -- on the ballots themselves in conspicuous  
3 language, but the U.S. Trustee is a bit concerned about the  
4 fact that in order to see what the alternatives actually are  
5 and what the different scenarios actually are, the Creditors  
6 really have to look very carefully through various parts of  
7 the disclosure statement and plan. And it's a bit of a  
8 treasure hunt for them to find those things.

9 THE COURT: Well --

10 MR. MORRISSEY: The --

11 THE COURT: -- as I understand -- let me interrupt  
12 you here for a second. As I understand it, it is true that  
13 the resolution of the equitable subordination claims may  
14 affect recoveries, particularly at the Hold Co. and Top Co.  
15 level. And if Alameda's asserting a claim at the Op Co.  
16 level and if it succeeds, then it could affect recoveries  
17 there.

18 And it is true that the characterization of the  
19 intercompany arrangements may affect recoveries. But none  
20 of that is dependent on the structure of the plan and  
21 whether there's a finance deal, whether there's a toggle  
22 deal, whether there's any other kind of distribution.  
23 There's an equal effect on all of those possibilities as I  
24 understand it. Isn't that right?

25 MR. MORRISSEY: Your Honor, I believe that is

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1 right. I'm just commenting on the lack of conspicuousness  
2 of the alternative scenarios. That -- and that is our  
3 concern there.

4 THE COURT: They are mentioned in the risk  
5 factors, right? And if you read the descriptions of these  
6 claims that it does say that they could have a material  
7 effect on the outcomes, don't they?

8 MR. MORRISSEY: Right. If you look in the right  
9 places, yes. You can find all of that information, Your  
10 Honor, but if you simply look in the chart as to the  
11 scenarios and what could happen, the only three scenarios  
12 listed are the -- if the plan, the Binance plan I'll call it  
13 --

14 THE COURT: Let me ask the Debtors in the footnote  
15 to just put a little bold type introduction that says that  
16 these recoveries could change depending upon the issues  
17 regarding equitable subordination as to Alameda and the  
18 issues regarding the treatment of the intercompany claims,  
19 and just cite to the pages in the disclosure statement where  
20 that can be found. Would that address your issue, Mr.  
21 Morrissey?

22 MR. MORRISSEY: Yes. Your Honor, you're referring  
23 to the ballot?

24 THE COURT: I'm referring to the disclosure  
25 statement in the part where it lists what the prospective

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1 reservations of rights of the objectors would be terminated.  
2 And what we wanted to do is limit that so that the  
3 reservation of rights would be reserved for the final  
4 approval of the APA itself, which is embodied in the plan so  
5 that parties could still reject -- object to the final  
6 approval of the APA and the disclosure -- the final  
7 disclosure statement, and the plan itself.

8 And Debtor's counsel was good enough to agree to  
9 make that change. And again, I just wanted to point out for  
10 the customers who are on the phone that all that's being  
11 requested today is approval for the Debtors to enter into  
12 the Asset Purchase Agreement with Binance. It's not an  
13 approval of the sale itself. That'll come later. It's --  
14 that is embodied in the plan, and that will be addressed at  
15 the confirmation hearing. And Your Honor, that's all I  
16 have. Thank you.

17 THE COURT: Okay. So you have worked out language  
18 that satisfies your concerns in that regard?

19 MR. MORRISSEY: Yes, Your Honor.

20 THE COURT: Okay. Are there any other --

21 CLERK: Your Honor --

22 THE COURT: -- objections? Yeah.

23 CLERK: I'm sorry, Your Honor. This is the law  
24 clerk. It's coming up on four hours. I don't know if we  
25 should change the tape.

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1 recoveries are.

2 MR. MORRISSEY: Yes, Your Honor. That would be  
3 fine. Thank you.

4 THE COURT: Okay. Were there any other issues?

5 MS. SCHEUER: Your Honor? Your Honor, this is  
6 Therese Scheuer for the U.S. Securities and Exchange  
7 Commission.

8 THE COURT: Yes.

9 MS. SCHEUER: Your Honor, the SEC filed a limited  
10 objection to the APA and conditional approval of the  
11 disclosure statement. I just rise to note that the  
12 disclosure as it's been made is the Debtor's disclosure, and  
13 the SEC reserves its right to object to plan confirmation on  
14 any basis, including the ability to consummate the  
15 transaction, the safety of assets on the purchasers'  
16 platform, and any arrangement the purchasers make that  
17 impact the safety of those assets. Thank you, Your Honor.

18 THE COURT: Okay.

19 MR. MORRISSEY: And Your Honor, Richard Morrissey  
20 once again for the U.S. Trustee. I wanted to point out to  
21 Your Honor that a change -- now Your Honor I know is going  
22 to go through the orders, but a change has been agreed to by  
23 the Debtors in the order approving the Debtors' entry into  
24 the APA. And I believe if -- at Paragraph 4, in its  
25 original form, that provision of the order provided that all

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1 THE COURT: Probably we should do so. You want to  
2 take five minutes and do that? Are we going to be timed out  
3 anytime soon, or...

4 CLERK: I don't know. I've sent a message to the  
5 ECRO, but I don't know.

6 THE COURT: All right. Why don't you -- we'll  
7 take a five-minute break, and you can have the ECRO change  
8 the tape, okay?

9 CLERK: Thank you.

10 THE COURT: Thank you.

11 (Recess)

12 THE COURT: All right. Are we ready to resume?

13 WOMAN 1: Yes, Your Honor.

14 THE COURT: Okay. All right. I think we've dealt  
15 with all the objections for the reasons stated on the  
16 record. I am prepared to approve the disclosure statements  
17 subject to the modifications we've discussed and to approve  
18 the APA with the understandings that we've discussed as to --  
19 -- and the fact that it's effective -- conditioned -- on  
20 confirmation of the plan.

21 I do have some comments on the proposed orders.  
22 It's possible I may have others because I know changes  
23 continue to be made and I really an out of time to keep up  
24 with all of the various proposals, but I think I caught up.  
25 But I will look once again at the final version you've sent

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me and here are my comments.

As to the APA order, there is proposed findings about the expense reimbursement provisions and how they are proportionate to the benefits to be obtained and how Binance wouldn't do the deal without them. Is there -- where in the declaration is there my evidence to support those findings?

WOMAN 1: Your Honor, I believe it was addressed in Mr. Tichenor's declaration. I believe it was the original declaration that we filed with the motion itself but let me double check.

THE COURT: Well, wherever it is, we should make sure it's in evidence for this hearing, right, so that I have a factual basis for any findings that I'm being asked to make.

WOMAN 1: Yes, Your Honor. I guess we proposed to -- I'm just confirming whether we filed the supplemental declaration. Your Honor, I guess we proposed to put Mr. Tichenor on the address that.

THE COURT: Okay.

CLERK: Your Honor, we may actually have to take a break again because people are starting to drop off the line at the four-hour mark and maybe everybody who hasn't called in in the last half hour should just redial in.

THE COURT: All right. Let's just -- I tell you what, everybody on the phone redial in. I'll do the same.

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Q Mr. Tichenor, can you let us know what your role is with the Debtors?

A I'm an investment banker to the Debtor.

Q And were you involved in the negotiation of the asset purchase agreement with Binance.US?

A I was.

Q Is there an expense reimbursement contemplated by the Binance.US APA?

A Yes. The Binance APA contemplates a \$5 million expense reimbursement payable by Voyager to Binance.US under a certain narrow set of facts and circumstances.

Q And based off of your professional judgment, do you believe that the expense reimbursement being requested is reasonable and appropriate?

A I do.

Q And do you believe that it confers substantial benefits upon the Debtors' estates?

A I do.

Q In your opinion, would Binance.US proceed with the transaction without the expense reimbursement?

A I do not. This was a point that was heavily negotiated during discussions with Binance.US. It was a point that we sought to have removed to the extent that it possible but was viewed as a item that was a requirement for purposes of being able to move forward with the transaction.

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Will that solve our issue, Lorraine?

CLERK: It did last time.

THE COURT: Okay. All right. So sorry for that (indiscernible) but that's what we'll do. Give everybody a few minutes to complete logging in.

(Pause)

THE COURT: All right. I hope we've allowed enough time for everybody to log back in. I'll ask everybody again to mute themselves if they're not actively speaking.

AUTOMATED VOICE: Unknown participant is now joining.

MAN 1: Randy, I think you're on.

MAN 2: Okay.

THE COURT: All right. Ms. Okike, are we ready to go?

MS. OKIKE: Yes, Your Honor. We'd like to put on the direct testimony of Mr. Brian Tichenor.

THE COURT: Very good. Mr. Tichenor, do you swear that the testimony you're about to give is the truth, the whole truth, and nothing but the truth so help you God?

MR. TICHENOR: I do, Your Honor.

THE COURT: Okay. Please proceed, Ms. Okike.

DIRECT EXAMINATION OF BRIAN TICHENOR

BY MS. OKIKE:

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Q And do you believe that the expense reimbursement which is triggered under certain circumstances is designed to maximize value for the estate?

A I do in the sense that I believe that the transaction generally maximizes value for the estate. The expense reimbursement is only paid under a narrow set of facts and circumstances and the APA generally still provides the Debtor with the ability to execute and move towards a toggle transaction to the extent that it so chooses to exercise a fiduciary out. Additionally, given the circumstances in which expense reimbursement is paid and the narrow sets of facts and circumstances around that, we feel comfortable that this is a -- from a transaction perspective, the transaction is value maximizing for purposes of the estate and recoveries.

MS. OKIKE: Thank you, Your Honor. No further questions.

THE COURT: Does anyone else wish to cross-examine Mr. Tichenor on this issue? All right. Very good. Thank you, Mr. Tichenor.

Getting back to the order, the -- Paragraph 23 still says that I'm approving the agreement in its entirety which seems a little potentially confusing to me. I'd like to make clear in the order as I think we did at FTX that the effectiveness of the agreement is subject to confirmation of

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the plan and is not binding in the absence of confirmation. So if the statement in Paragraph 23 about authorizing entry and agreement in its entirety is not needed, I prefer to take that out because -- to have the explicit statement that I just said. Does that work for you?

MS. OKIKE: Yes, Your Honor. I'm just trying to locate the provision. I don't know if I'm looking at a different version. You said it's Paragraph 23? Do you know wish --

THE COURT: It may have been renumbered. It was Paragraph 23 in what I originally read which seemed to have the idea that I was authorizing the entire agreement. There's another provision somewhere else that says that the parties are granted all rights and remedies under the agreement. Those a little confusing in light of the fact that the agreement itself is contingent on confirmation and I just don't want there to be any --

MS. OKIKE: Understood, Your Honor. We'll make that revision.

THE COURT: Okay. Thank you. Is it contemplated if you're called on the pay the seller -- excuse me -- to pay the purchaser expenses -- is it contemplated that those would be subject to my review and approval?

MS. OKIKE: Your Honor, I believe what we're asking today is the approval of the expense reimbursement.

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with this process which this, I think, would qualify for unless -- they're subject to my determination of reasonableness.

MS. OKIKE: Your Honor, I think -- I'm just trying to think through it because in our minds, we view Binance.US as basically serving as, you know, a stalking horse, right, that may get topped in the process. And so I'm just trying to understand that, you know, in the context of a 363 sale where you have a stalking horse that gets approved for expense reimbursement -- I don't believe in most circumstances the Court would review those fees for reasonableness and we kind of view this --

THE COURT: That's because Statute 1129 isn't applicable then -- that Section 1129 -- this is all part of a plan process -- Section 2219, one of the requirements for confirmation is that any fees payable to anybody involved in the plan process have to be subject to my review for reasonableness.

MS. OKIKE: Understood, Your Honor.

MR. GOLDBERG: Your Honor, if I may. Adam Goldberg of Latham & Watkins on behalf of Binance.US. Of course the fees would have to be reasonable to be payable by the Debtor and we have no issue including a provision that makes clear that Your Honor would be entitled to review for reasonableness. But the -- to be clear, our position would

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The provision itself does require that the expense themselves are, I believe, reasonable and necessary.

THE COURT: And is it contemplated that that determination will be subject to review by me?

MS. OKIKE: Your Honor, if you could just give me one moment as I just look at the provision. I don't want to misstate what we've agreed to.

THE COURT: The technical reason is that it's all part of the plan process and even if you decide to toggle to a different plan and if you kick off the purchaser expense in context with their -- where they're kicked off, it's all part of a plan process and determination and includes the payment of fees and I think you have an 1129(a) -- I don't even have it in front of me -- (a)(4) issue that I have to approve it as reasonable.

MS. OKIKE: I'm just thinking through that, Your Honor. So -- I mean, what we're seeking today is the authority to the extent that the expense reimbursement is triggered under the provisions in the APA to pay the purchaser expenses up to a cap of 5 million and then is the request that Your Honor is able to review the fees themselves to ensure reasonableness.

THE COURT: Yeah. I think that as a technical matter, this being part of a plan process, I have to -- I can't confirm unless any fees that are payable in connection

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be that these fees are payable and would be allowed as administrative expenses pursuant to this order regardless of whether a plan is confirmed if the fees become payable in accordance with the APA.

That, I think, is the deal that we struck with the Debtors to effectively serve as the stalking horse as Ms. Okike just pointed out.

THE COURT: I do understand that but let's just make them subject to my review for reasonableness and just leave it at that because it's possible -- there is the possibility that I'll confirm the plan without these fees and I (indiscernible) without the Binance agreement going forward and with these fees being payable so let's just provide that I'll review them for reasonableness and we'll be protected in all of them.

MS. OKIKE: Understood. That's works, Your Honor.

MR. GOLDBERG: Thank you, Your Honor.

THE COURT: Thank you. Very good. On the disclosure statement order, in all of the ballots where people are being given the choice to opt in to the relief (indiscernible) or to contribute their claims, I would like there to be an explicit statement that says that your decision as to whether to do this or not is entirely voluntary and is -- it is not required. Okay?

MS. OKIKE: Yes, Your Honor.

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1 THE COURT: I'm not sure that I saw in the order  
2 any provisions that said when cure notices would be sent,  
3 when the objections to assumption or assignment would be  
4 due, although I did see in some of the attachments that you  
5 seem to be looking for February 8th as the objection date on  
6 contract objections. Starting with cure notices, when are  
7 you proposing to give people notice as to the contracts are  
8 to assumed and rejected and the proposed cure amounts?

9 MS. OKIKE: I believe those are in the exhibits,  
10 Your Honor. I just want to look. We can of course add it  
11 to the order. February -- for assumed contracts, it's  
12 February 22nd.

13 THE COURT: That's when you're going to -- my  
14 question was more, when will you be telling the other  
15 contracting parties that you're proposing to assume their  
16 contract and telling them what their proposed cure amounts  
17 are.

18 MS. OKIKE: Yes, Your Honor. I believe that's  
19 February 8th.

20 THE COURT: Okay. All right.

21 MS. OKIKE: We can add that to the order.

22 THE COURT: I thought that was what you were  
23 proposing as to when they would be able to object. So  
24 you're -- and then you're asking them to object two weeks  
25 later?

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1 dispense with it as to other classes. Am I missing  
2 something? Do I have that discretion under some other rule  
3 that I'm missing?

4 MS. OKIKE: No, Your Honor. I believe that's  
5 correct and we can modify that to make clear that we'll send  
6 it to those parties.

7 THE COURT: And are you proposing to seek  
8 voluntary releases or contributions of claims from anybody  
9 in classes that are unimpaired? Do you have --

10 THE COURT: No, Your Honor.

11 THE COURT: Okay.

12 MS. OKIKE: No, Your Honor.

13 THE COURT: All right. Those are my comments.

14 MS. OKIKE: Your Honor, sorry. I do want to  
15 clarify. With respect to parties in unimpaired classes, I  
16 believe -- and I just want to double check -- I believe they  
17 may be getting a notice of unimpaired status. I don't  
18 believe that they contributing claims but I just want to  
19 double check just to make sure.

20 THE COURT: Yeah. If they're being asked to give  
21 a release or being asked to contribute claims, they should  
22 get the disclosure statement so they can read the  
23 disclosures that are relevant to those points.

24 MS. OKIKE: Understood, Your Honor. They are  
25 getting an opt-in notice so we will provide the disclosure

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1 MS. OKIKE: Yes, Your Honor.

2 THE COURT: But do you need all the way until  
3 February 8th to make that determination?

4 MS. OKIKE: Your Honor, I believe we could do it  
5 earlier than that. I think we have a sense of what  
6 contracts may be needed.

7 THE COURT: I'd prefer to give the contracting  
8 parties 21 days if you don't have to give them less time  
9 than (indiscernible).

10 MS. OKIKE: Will do.

11 THE COURT: Very good. And there's a provision  
12 about -- in some of the procedures that says that the  
13 Debtors will be able object until a few days before the  
14 voting deadline. Do you need that much time? I'm concerned  
15 about whether people will have enough time to seek interim  
16 allowance if you make an objection two days before the  
17 voting deadline.

18 MS. OKIKE: Your Honor, we can move that up.

19 THE COURT: Okay. I appreciate that. Proposed  
20 Paragraph 13 says that the disclosure statement materials  
21 won't be sent to people who are not entitled to vote. I see  
22 this proposal all the time but I'm concerned because Rule  
23 3017(d) says that I can dispense with the mailing of the  
24 disclosure statement to creditors in classes that are  
25 unimpaired, but it doesn't seem to give me discretion to

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1 statement to them as well.

2 THE COURT: Okay. All right. Are there any other  
3 comments or -- I will look at the final versions of the  
4 orders when they're ready and if you could do another set --  
5 redlines -- that compare them to the orders that I entered  
6 as to the FTX proposals, that will help me because I went  
7 through the other redlines somewhat but I was  
8 (indiscernible) pretty fatigued by the time I got to them  
9 and it would be useful for me to have a fresh set of full  
10 comparisons to look at.

11 MS. OKIKE: Yes, Your Honor. Of course we'll do  
12 that and we really appreciate you accommodating our late-  
13 night filing and getting through all the documents. So our  
14 appreciation for that. Thank you.

15 THE COURT: All right. That being said, is there  
16 anything else to be accomplished today?

17 MS. CORDRY: It's Karen Cordry, Your Honor. If I  
18 could ask if we could possible also see a set of the  
19 redlines because we might have some comments as well just in  
20 terms of some of the points that we had raised that are  
21 being addressed.

22 MS. OKIKE: Of course. Yep, we can share the  
23 redlines.

24 MS. CORDRY: Thank you. We appreciate it.

25 THE COURT: Okay. Anything else? Very good.

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Thank you all very much. I hope you will continue to discuss the issues that are still open and wish you good luck in reaching resolutions of them.

MS. OKIKE: Thank you, Your Honor.

MR. GOLDBERG: Thank you, Your Honor.

THE COURT: Okay. All right. On that note, we are adjourned. Thank you very much.

(Whereupon these proceedings were concluded at 6:06 PM)

## C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: January 13, 2023

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[experiencing - filing]

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[put - reasonableness]

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[set - sonya]

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

_____	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
_____	)	

**DECLARATION OF BRIAN TICHENOR  
IN SUPPORT OF CONFIRMATION OF THE THIRD AMENDED  
JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND ITS DEBTOR  
AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

I, Brian Tichenor, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

1. I am a Managing Director in the Financial Institutions Group at Moelis & Company LLC (“Moelis”) and have served as an investment banker to the Debtors since June 2022.

2. I submit this declaration in support of confirmation of the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

*Bankruptcy Code* (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”)<sup>2</sup> [Docket No. 852] and the *Debtors’ Memorandum of Law in Support of (I) Final Approval of the Second Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code and (II) an Order Confirming the Debtors’ Third Amended Joint Chapter 11 Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* (the “Confirmation Brief”), filed contemporaneously herewith.

3. The statements in this declaration are, except where specifically noted, based on (a) my personal knowledge or opinion of the Debtors’ operations and finances, (b) my personal knowledge, belief, or opinion, (c) information I have received from the Debtors’ employees or advisors and/or other employees of Moelis, or (d) from the Debtors’ records maintained in the ordinary course of their business. If called to testify, I could and would testify competently to the facts set forth herein.

### **QUALIFICATIONS**

4. Moelis is an investment banking firm with its principal office located in New York, New York. Moelis is a registered broker-dealer with the United States Securities and Exchange Commission and is a member of the Financial Industry Regulatory Authority. Moelis was founded in 2007 and is a wholly-owned subsidiary of Moelis & Company Group LP. Moelis & Company Group LP, together with its subsidiaries, has approximately 1,000 employees in offices in North

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan, the Asset Purchase Agreement, the Confirmation Brief, or Confirmation Order as applicable.

America, South America, Europe, the Middle East, and Asia. Moelis & Company Group LP is a subsidiary of Moelis & Company, a public company listed on the New York Stock Exchange.

5. Moelis provides a broad range of financial advisory and investment banking services to its clients, including: (a) general corporate finance; (b) mergers, acquisitions, and divestitures; (c) corporate restructurings; (d) special committee assignments; and (e) capital raising. Moelis and its senior professionals have extensive experience in the reorganization and restructuring of distressed companies, both out-of-court and in chapter 11 cases. Moelis' business reorganization professionals have served as financial advisors and/or investment bankers in numerous cases, including: *In re Knotel, Inc.*, No. 21-10146 (MFW) (Bankr. D. Del. Mar. 12, 2021); *In re CBL & Assocs. Props., Inc.*, No. 20-35226 (DRJ) (Bankr. S.D. Tex. Dec. 30, 2020); *In re Energy Alloys Holdings, LLC*, No. 20-12088 (MFW) (Bankr. D. Del. Nov. 23, 2020); *In re Jason Indus., Inc.*, No. 20-22766 (RDD) (Bankr. S.D.N.Y. Aug. 27, 2020); *In re The Hertz Corp.*, No. 20-11218 (MFW) (Bankr. D. Del. July 30, 2020); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. Aug. 11, 2020); *In re The McClatchy Co.*, No. 20-10418 (MEW) (Bankr. S.D.N.Y. May 18, 2020); *In re Internap Technology Solutions Inc.*, No. 20-22393 (RDD) (Bankr. S.D.N.Y. May 5, 2020); *In re Rentpath Holdings, Inc.*, No. 20-10312 (BLS) (Bankr. D. Del. Mar. 10, 2020); *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Oct. 21, 2019); *In re Monitronics Int'l, Inc.*, No. 19-33650 (DRJ) (Bankr. S. D. Tex. Aug. 1, 2019); *In re Aegerion Pharmaceuticals, Inc.*, No. 19-11632 (MG) (Bankr. S.D.N.Y. July 10, 2019); *In re Joerns WoundCo Holdings, Inc.*, No. 19-11401 (JTD) (Bankr. D. Del. July 25, 2019); *In re FTD Cos.*, No. 19-11240 (LSS) (Bankr. D. Del. July 2, 2019); *In re Hexion Holdings LLC*, No. 19-10684 (KG) (Bankr. D. Del. May 15, 2019); *In re Parker Drilling Company, Inc.*, No. 18-36958 (MI) (Bankr. S.D. Tex. Jan. 15, 2019); *In re Aralez Pharmaceuticals US Inc.*, No. 18-12425 (MG)

(Bankr. S.D.N.Y. Oct. 31, 2018); *In re iHeartMedia, Inc.*, No. 18-31274 (MI) (Bankr. S.D. Tex. July 24, 2018); *In re Global A&T Electronics Ltd.*, No. 17-23931 (RDD) (Bankr. S.D.N.Y. Feb. 26, 2018); *In re Toys “R” US, Inc.*, No. 17-34665 (KLP) (Bankr. E.D. Va. Nov. 21, 2017); *In re TK Holdings, Inc.*, No. 17-11375 (BLS) (Bankr. D. Del. Aug. 30, 2017); *In re Basic Energy Services, Inc.*, No. 16-12320 (KJC) (Bankr. D. Del. Nov. 17, 2016); *In re UCI International, LLC*, No. 16-11354 (MFW) (Bankr. D. Del. July 12, 2016); *In re AOG Ent., Inc.*, No. 16-11090 (SMB) (Bankr. S.D.N.Y. June 8, 2016); *In re SFX Entertainment, Inc.*, No. 16-10238 (MFW) (Bankr. D. Del. Mar. 21, 2016); *In re American Apparel, Inc.*, No. 15-12055 (BLS) (Bankr. D. Del. Nov. 30, 2015); *In re Allied Nevada Gold Corp.*, No. 15-10503 (MFW) (Bankr. D. Del. Apr. 15, 2015); *In re GSE Envt’l, Inc.*, No. 14-11126 (MFW) (Bankr. D. Del. May 30, 2014); *In re MACH Gen, LLC*, No. 14-10461 (MFW) (Bankr. D. Del. Apr. 11, 2014); *In re MPM Silicones, LLC*, No. 14-22503 (RDD) (Bankr. S.D.N.Y. May 16, 2014).

6. I have over 10 years of investment banking experience advising companies, equity investors, financial vehicles, and creditors across a broad range of industries and geographies in a full suite of corporate transactions. Prior to joining Moelis, I was in the corporate and investment banking group at Citigroup Inc. where I focused on investment banking advisory transactions in the Financial Institutions Group. I hold a Bachelor of Science degrees in finance and computer science from Boston College and have a Master of Business Administration degree from Georgetown University.

7. I have been involved in several notable chapter 11 cases and restructuring assignments, including as advisor to the ad hoc group of senior unsecured noteholders in Walter Investment Management Corporation’s \$4.1 billion restructuring; and as advisor to New Residential Investment Corporation’s \$1.2 billion acquisition of select assets from Ditech Holding

Corporation pursuant to a section 363 asset sale. I have also been involved in numerous restructuring transactions outside of the chapter 11 context, including advising New Residential Investment Corporation in its \$600 million recapitalization and restructuring, Ambac Financial Group in its \$18 billion restructuring of Puerto Rico's sales tax financing corporation (COFINA), Syncora Guarantee Inc. in its \$13.5 billion reinsurance of financial guarantee policies to Assured Guarantee Corporation and other liability management including the sale of its operating business to GoldenTree Asset Management, Ambac Financial Group on its \$557 million exchange offer of its Auction Market Preferred Shares, Ambac Financial Group on its \$538 million exchange of Corolla Trust obligations and Junior Surplus Notes, an approximately \$10 billion ad hoc group of non-litigating preferred shareholders in a proposed \$6.9 trillion restructuring of Fannie Mae and Freddie Mac, secured lenders of AG Mortgage Investment Trust in its \$3.0 billion restructuring of its repurchase agreement portfolio, and secured lenders of MFA Financial, Inc. in its \$5.8 billion restructuring of its repurchase agreement portfolio. And in addition to these chapter 11 cases, I am currently part of the Moelis teams serving as investment bankers to the debtors and debtors-in-possession in *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D. N.J.) and *In re Genesis General HoldCo LLC*, No. 23-10063 (SHL) (Bankr. S.D.N.Y.).

8. In June 2022, Moelis was engaged to advise the Debtors as to strategic alternatives in light of the Debtors' efforts to navigate the challenges then impacting the cryptocurrency industry. I have been involved as a senior member of the Moelis team throughout our engagement, including participating in the Debtors' sales and auction processes in these chapter 11 cases.

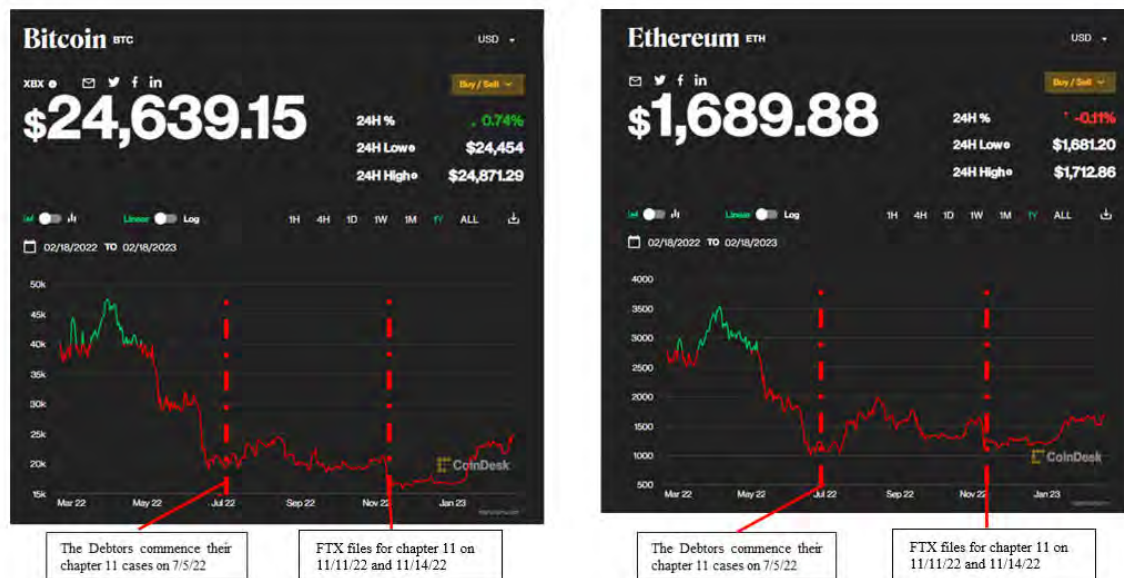
#### **EVENTS LEADING UP TO CONFIRMATION**

9. Prior to these chapter 11 cases, Voyager operated a cryptocurrency trading platform that allowed customers to buy, sell, and store cryptocurrency on an easy-to-use and "accessible-to-all" platform. Voyager's primary operations consisted of (i) brokerage services, (ii) custodial



services through which customers earned interest and other rewards on stored cryptocurrency assets, and (iii) lending programs. All of Voyager’s services were accessible through a mobile application that users could download on their smartphones and other smart devices. Voyager’s mobile application was downloaded millions of times and had over 1.1 million active users as of the Petition Date. In 2021, Voyager was one of the top ten most downloaded cryptocurrency mobile applications in the world.

10. Cryptocurrency has been volatile, and prices vacillate by the second due to constant trading occurring 24 hours a day, seven days a week globally. 2022 saw historic levels of volatility in the markets at large, and the cryptocurrency markets were not immune. Bitcoin and Ethereum slumped by over 65% and 68%, respectively, from January 1, 2022 to year-end:<sup>3</sup>



11. In June 2022, the Debtors engaged Moelis to advise the Debtors as to strategic alternatives in light of this market volatility and the broader challenges plaguing the

<sup>3</sup> CoinDesk; February 18, 2023, 6:03 p.m. ET.

cryptocurrency sector. Beginning on or about June 20, 2022, Moelis initiated a process to solicit interest in possible deal structures. By early-July 2022, and after evaluating market support for an out-of-court restructuring, the Debtors determined that filing for chapter 11 would improve their chances of effectuating a transaction to help stabilize the Debtors' business and preserve the value of the Debtors' enterprise, in the best interests of the Debtors and their estates as well as the Debtors' creditors, customers, employees, and all other parties in interest.

12. On July 5, 2022, the Debtors filed these chapter 11 cases. Soon thereafter, on July 21, 2022, the Debtors commenced a formal sale process led by Moelis and filed the *Motion Seeking Entry of an Order (I) Approving the Bidding Procedures and Related Dates and Deadlines, (II) Scheduling Hearings and Objection Deadlines With Respect To the Debtors' Sale, and (III) Granting Related Relief* [Docket No. 126].

13. On September 13, 2022, the Debtors commenced a two-week auction (the "Auction"). The Auction included multiple rounds of bidding and featured extensive arm's-length negotiations with each participating bidder. I was one of the people at Moelis responsible for and participating in the Auction.

14. The Debtors, in coordination with the Official Committee of Unsecured Creditors (the "Committee"), ultimately selected the bid from West Realm Shires Inc. ("FTX US," and along with its parent entity and affiliates, "FTX") and closed the Auction. On September 27, 2022, the Debtors and FTX US executed an asset purchase agreement (as amended, the "FTX Purchase Agreement") memorializing the terms of the FTX US bid. Following the conclusion of the Auction, the Debtors sought, and obtained, this Court's approval to enter into the FTX Purchase Agreement. The Debtors then proceeded to commence solicitation of votes on a prior version of the Plan that contemplated the effectuation of the FTX Purchase Agreement.

15. A few weeks after this Court approved the Debtors' entry into the FTX Purchase Agreement, FTX and its affiliates unexpectedly collapsed. On November 11, 2022, certain FTX US affiliates commenced chapter 11 proceedings. Three days later, FTX US did the same. The Debtors restarted their sale process effectively simultaneously with the FTX collapse.

16. Cryptocurrency market headwinds only grew stronger in the fall of 2022 and the market was thrown into further turmoil due to FTX's historic collapse. While the Debtors leveraged the groundwork and interest from their first sales process, given the significant market decline, the Debtors were left with fewer opportunities.

17. As part of the second sales process, the Debtors engaged in extensive month-long negotiations with interested parties that included parties that had previously participated in the Auction as well as new parties that emerged. Moelis, along with the Debtors' other advisors and the Debtors' management team, evaluated each proposal, and pushed bidders to improve the economic and other terms of their bids. When analyzing proposals received from interested parties, the Debtors and their advisors considered both the viability and risk factors associated with each proposed transaction, including but not limited to, timing considerations, third-party financing requirements, ability to consummate, cybersecurity risks, regulatory and licensing status, and counterparty risk based on the counterparty due diligence conducted by the Debtors during the first and second sales processes.

18. Throughout the negotiations, the Debtors, in consultation with the Committee, also considered pursuing a transaction that would allow the Debtors to pivot and distribute cryptocurrency or cash to creditors on their own (the "Liquidation Transaction"), without pivoting to a chapter 7 liquidation. The Debtors and their advisors ultimately used the Liquidation Transaction as a floor against which to compare third-party bids. Ultimately, the Debtors

determined that pursuing a sale transaction with a third party could, depending on the structure of the transaction, provide the potential for the best recovery currently available to creditors under the circumstances while also reducing the risk surrounding execution of the transaction and reducing the likely value leakage that would occur in the Liquidation Transaction. Accordingly, the Debtors, in their business judgment, determined to reengage with third parties to identify an alternative transaction partner.

19. After negotiation and deliberation, on December 18, 2022, Debtor Voyager Digital, LLC (the “Seller”) executed that certain asset purchase agreement (the “Asset Purchase Agreement”) with BAM Trading Services Inc. (“Binance.US” or “Purchaser,” and such transaction thereunder, the “Sale Transaction”). The Court approved the Debtors’ entry into the Asset Purchase Agreement on January 13, 2022 [Docket No. 860].

### **THE DEBTORS’ PLAN SHOULD BE CONFIRMED**

#### **I. THE PLAN PROVIDES THE HIGHEST AVAILABLE VALUE TO CREDITORS UNDER THE CIRCUMSTANCES.**

20. The Debtors value the Sale Transaction at approximately \$1.022 billion, comprising (a) the value of cryptocurrency on the Voyager platform as of a date to be determined, which as of December 16, 2022 at 0:00 UTC, is estimated to be \$1.002 billion, plus (b) additional consideration, which is estimated to provide at least \$20 million of incremental value. Pursuant to the Asset Purchase Agreement, under the terms and conditions of the Plan and subject to the Debtors’ ongoing assessment that the Sale Transaction is higher and better than the Liquidation Transaction, Binance.US will acquire and distribute substantially all of the Debtors’ assets to creditors. Either the transaction contemplated by the Asset Purchase Agreement or, if the Debtors toggle, the Liquidation Transaction, will be effectuated through the Plan.

21. Based on information in the Debtors' possession to date, the Sale Transaction (a) is the only transaction currently available to the Debtors that did not contemplate requiring the Debtors to liquidate cryptocurrency for working capital purposes in the first instance, (b) includes reimbursement by Binance.US of up to \$15 million of Seller's expenses under certain circumstances set forth in the Asset Purchase Agreement, and (c) provides a \$10 million reverse termination fee payable to the Seller by Binance.US to compensate the Debtors' estates in the event that Binance.US cannot consummate the transaction under certain circumstances set forth in the Asset Purchase Agreement.

22. In addition, the Debtors, the Committee, and their respective advisors negotiated certain provisions designed to safeguard the Debtors' cryptocurrency in advance of distributions being made to creditors. Specifically, the Asset Purchase Agreement provides that, up until the transfer of cryptocurrency to Binance.US, the Debtors will maintain control of all of the Debtors' cryptocurrency, including during the rebalancing of the Debtors' cryptocurrency portfolio (that may include the use of third parties and third-party exchanges to execute the rebalancing transactions), which is a prerequisite to closing and effectuating distributions to creditors. I believe that allowing the Debtors to retain control of all of the Debtors' cryptocurrency until closing is critical to minimizing risk given the increased volatility in the crypto space.

23. Further, in connection with the evaluation of the Binance.US proposal, the Debtors conducted certain financial and business counterparty due diligence on Binance.US. This due diligence included reviews of certain documentation provided by Binance.US and discussions with senior management at Binance.US relating to, among other things: audited financial statements, interim unaudited financial statements, available liquidity, related party services agreements, wallet infrastructure, anti-money laundering laws ("AML") and "know your customer" ("KYC")

procedures, money transmitter licensing status, and business plans submitted to selected state regulators in connection with the issuance of money transmitter licenses. Such due diligence was based on information provided to the Debtors' and the Committee's financial and legal advisors by Binance.US and representations made by Binance.US senior management. As outlined in Moelis's engagement letter, while Moelis was involved in such discussions and diligence reviews, Moelis is not a technical expert on matters relating to the appropriateness of information security or other custody protocols. *See Application of Debtors and Debtors in Possession For Entry Of An Order Authorizing the Employment and Retention Of Moelis & Company Llc As Investment Banker, Capital Markets Advisor, And Financial Advisor Effective As Of The Petition Date* [Docket No. 117].

24. Moreover, I have been informed by the Debtors' legal advisors that Section 6.12 of the Asset Purchase Agreement provides that the Seller (prior to the transfer of cryptocurrency to Binance.US) and each transferred creditor (from and after the transfer of cryptocurrency to Binance.US) will retain all right, title, and interest in and to the cryptocurrency allocated to it in accordance with the Binance.US Asset Purchase Agreement through and including such time as such cryptocurrency is returned to Seller or distributed to such transferred creditor. It is my understanding that under the Asset Purchase Agreement, the cryptocurrency will be held by Binance.US solely for the benefit of the Seller or transferred creditor, as applicable, until such distributions are made.

25. In addition, under the Asset Purchase Agreement, the Debtors' claims against Three Arrows Capital and other parties will vest in the Wind-Down Debtor and any recovery thereon will be distributed to creditors.



26. Finally, and most importantly, the Asset Purchase Agreement allows the Debtors to react to changing market conditions. If the Debtors otherwise determine that the Asset Purchase Agreement is not the highest and best available option for creditors under the circumstances and exercise their “fiduciary out,” or the Sale Transaction is otherwise not effectuated by the Outside Date, then the Debtors may pivot to the Liquidation Transaction and pursue self-liquidation. This feature of the Asset Purchase Agreement, in my view, is protective of creditors in a volatile market, and provides a more certain timeline for recovery and resolution of Claims. The Debtors will toggle to the Liquidation Transaction if they conclude in their good faith judgment that the Sale Transaction no longer is the highest or otherwise best option for creditors available under the circumstances.

27. For all the reasons set forth in this Section I, I believe that the Plan is the compilation of months of long, hard-fought negotiations whereby the Debtors worked to negotiate a Plan that provides for distributions to creditors on an expeditious timeline, and it provides the highest value available to creditors under the circumstances.

## **II. THE PLAN IS UNLIKELY TO BE FOLLOWED BY A LIQUIDATION OR FURTHER REORGANIZATION**

28. I understand that Section 1129(a)(5) of the Bankruptcy Codes requires the Court to determine, in relevant part, whether the Plan provides adequate means for implementation. I also understand that Section 1129(a)(11) of the Bankruptcy Code requires the Court determine, in relevant part, that confirmation is not likely to be followed by the liquidation or further financial reorganization of the Debtors (or any successor thereto), unless such liquidation or reorganization is proposed in the Plan.

29. *First*, I believe that the Sale Transaction, which has an implied value of \$1.022 billion, will allow the Debtors to satisfy their obligations under the Plan. The Sale Transaction

provides the highest value currently available under the circumstances to the Debtors' creditors. I understand that the value created by the Sale Transaction will be sufficient to satisfy all Allowed Priority Claims and Allowed Administrative Claims under the Plan, including all Allowed Professional Fee Claims, in full. As such, the Debtors have a demonstrated ability to fund distributions required under the Plan, including to taxing authorities, administrative claimants, and other Unimpaired Classes of Claims.

30. Further, Binance.US has represented to the Debtor and its advisors that it has the legal, operational, financial, and technical capacity to distribute cryptocurrency in-kind to Holders of Allowed Account Holder Claims, including the necessary money transmitter licensing approvals required to facilitate in-kind distributions. Binance.US has agreed to hold the cryptocurrency solely for the benefit of the Seller or transferred creditor, as applicable, until such distributions are made. In the Unsupported Jurisdictions,<sup>4</sup> the Debtors will retain custody of the cryptocurrency that would be distributed to those creditors. In the event that Binance.US is not able to obtain the necessary approvals to make distributions to creditors in Unsupported Jurisdictions within six months following the closing (*i.e.*, an incremental 3 months following distributions to creditors in other jurisdictions), the Debtors would convert the cryptocurrency attributable to such creditors to cash and the Debtors would then distribute the equivalent realized cash value associated with such liquidations to such creditors under the chapter 11 plan. If

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<sup>4</sup> "Unsupported Jurisdictions" refers to Hawaii, New York, Texas, and Vermont, in which Binance.US does not yet have the requisite money transmitter licensing approvals, authorizations, or exemptions (as applicable).

Binance.US is able to obtain the necessary money transmitter licensing approvals within that six-month period, Binance.US would make in-kind distributions to those creditors.

31. *Second*, Binance.US has represented that it has sufficient cash and other consideration, as applicable, to pay the Purchase Price. The Debtors requested and received proof satisfactory to them of funds to substantiate that representation. Pursuant to the Asset Purchase Agreement, I understand the Debtors negotiated additional assurances and value for the benefit of their estates under the Asset Purchase Agreement, including (a) reimbursement by Binance.US of up to \$15 million of Seller's expenses in certain circumstances, (b) a \$10 million good-faith deposit paid by Binance.US to the Seller, and (c) a \$10 million reverse termination fee payable to the Seller by Binance.US, in each case, subject to the terms and conditions set forth in the Asset Purchase Agreement. I understand, based on Binance.US's representations that Binance.US will have the ability to pay the expense reimbursement and reverse termination fee if and when they become due. Binance.US paid the \$10 million good faith deposit to the Seller, pursuant to the Asset Purchase Agreement, which the Seller shall be entitled to keep, in full, in the event of a Purchaser Default Termination.

32. *Third*, in response to recent media reports that Binance.US allegedly transferred more than \$400 million to Merit Peak Ltd., a trading firm managed by Binance CEO Changpeng Zhao, the Debtors have been engaged in an ongoing review of additional supplemental diligence into Binance.US.<sup>5</sup> The Debtor's supplemental diligence is examining the relationship between Binance.US, Merit Peak Ltd., an additional third-party market maker, and Zhao, as well as Binance.US's financial controls, including review of audit results testing the sufficiency of

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<sup>5</sup> See *Crypto giant Binance moved \$400 million from U.S. partner to firm managed by CEO Zhao*, REUTERS.COM (Feb. 16, 2023), available at <https://www.reuters.com/technology/crypto-giant-binance-moved-400-million-us-partner-firm-managed-by-ceo-zhao-2023-02-16/>

Binance.US's Information Security Management System and Privacy Information Management System. The documents are being provided by Binance.US with the intention of demonstrating Binance.US's ability to consummate the Asset Purchase Agreement, to which the Debtors are conducting an ongoing review. To the extent undisclosed information uncovered during the Debtors' ongoing review reveals Binance.US is unable to consummate the Asset Purchase Agreement, as discussed elsewhere in this Declaration, the Debtors will promptly pivot to the Liquidation Transaction.

33. *Fourth*, I am aware that, pursuant to the Plan, on the Effective Date, all property constituting Wind-Down Debtor Assets, including all Vested Causes of Action of the Debtors (unless otherwise released, waived, compromised, settled, transferred, or discharged pursuant to the Plan), will vest in the Wind-Down Debtor. It is my understanding that any proceeds acquired from pursuit of the Vested Causes of Action (if any) will inure to the benefit of the Debtors' creditors.

34. Based on the foregoing, it is unlikely that confirmation of the Plan will be followed by a liquidation or the need for further reorganization except for that disclosed in the Plan.

### **III. The Liquidation Transaction Provides an Alternative Transaction That Will Obviate the Need for Further Reorganization or Chapter 7 Liquidation.**

35. Based on the diligence the Debtors have performed to date, and as discussed above, I believe the Sale Transaction is the highest and best option currently available under the circumstances. But the cryptocurrency industry remains volatile, even for an already volatile business, and Moelis and the Debtors' other advisors continue to closely monitor developments. To that end, the Asset Purchase Agreement permits the Debtors to pivot to a higher and better third-party bid (should one emerge) or the Liquidation Transaction if the Debtors exercise their "fiduciary out" or the Sale Transaction is not effectuated by the outside date included thereunder,

subject to expense reimbursement of Binance.US in certain circumstances set forth in the Asset Purchase Agreement.

36. Pursuing the Liquidation Transaction would, however, impose costs of its own on the Debtors, take time, and present its own risks. Among other things, the Liquidation Transaction would involve the Debtors “rebalancing” their cryptocurrency holdings to prepare for distributions to creditors, and then reopening the Voyager platform for approximately a month to allow customers to withdraw their *pro rata* share of cryptocurrency, to the extent it can be withdrawn. The Liquidation Transaction, among other things, would likely lead to incremental value leakage (*e.g.*, the Debtors would likely be forced to realize a discount due to liquidation of sizable positions in the marketplace), over and above that in a third-party transaction, thereby resulting in diminished creditor recoveries, and/or require the Debtors to liquidate additional cryptocurrency to fund working capital requirements to complete the work required (including AML/KYC compliance). The Debtors and their other advisors have also indicated that the Liquidation Transaction may create additional security risks (particularly if the Debtors are unable to retain critical personnel necessary to perform the Liquidation Transaction), be less tax efficient for customers than a third-party transaction, strand some coins, which can be withdrawn by customers from certain third-party exchanges (like Binance.US) but not from Voyager, and may severely damage the value of the VGX token, the native token of the Voyager platform.

37. In light of these risks, the Asset Purchase Agreement provides that in the event Debtors pivot to the Liquidation Transaction, Binance.US will provide certain services to facilitate the Liquidation Transaction to ensure that the Debtors can rely on the Binance.US platform to minimize leakage with, and cybersecurity risks when, returning cryptocurrency to creditors. In addition, the work to prepare to consummate and execute on the Asset Purchase Agreement will

better prepare the Debtors to address the aforementioned self-liquidation challenges and complete the Liquidation Transaction if necessary.

38. My understanding, based on my work with the Debtors, is that the Debtors have a plan in place to pivot to and implement the Liquidation Transaction, if necessary. As a result, in the event the Sale Transaction fails to close, the Debtors have the infrastructure and capability (and, due to the other protections provided in the Plan, including the Employee Transition Plan, the personnel) to proceed with a self-liquidation. The ability to perform this self-liquidation pursuant to the Liquidation Transaction makes it unlikely that Debtors will need to undergo a court-supervised liquidation or pursue further reorganization other than that provided in the Plan.

#### **IV. THE PLAN WAS PROPOSED IN GOOD FAITH**

39. I understand that Section 1129(a)(3) requires that the Plan be proposed in good faith. I and the other members of the Moelis team, along with the Debtors' other advisors, were intimately involved in the negotiation and execution of the Asset Purchase Agreement and the development of the Plan. The Plan and Asset Purchase Agreement followed extensive arm's-length negotiations among sophisticated, well-represented parties, including the Debtors, the Committee, and interested counterparties, ensuring that the Debtors' stakeholders realize the highest possible recoveries under the circumstances.<sup>6</sup>

40. I believe that the Debtors' marketing process with respect to the Sale Transaction afforded a reasonable opportunity for any party to make a higher or otherwise better offer. Following FTX's bankruptcy, no other party or parties offered to purchase the Acquired Assets for greater overall value to the Debtors' estates than Binance.US. Based on our analysis to date, I

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<sup>6</sup> For the avoidance of doubt, Binance.US is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stakeholders exist between the Purchaser and the Debtors.



believe the Asset Purchase Agreement will provide a greater recovery for the Debtors than would be provided by any other currently available alternative and, if the Debtors ultimately determine that another third-party option (if one emerges) or the Liquidation Transaction will deliver greater value to creditors, they will toggle to that transaction.

41. In my opinion the consideration provided by Binance.US pursuant to the Asset Purchase Agreement constitutes the best offer for the Acquired Assets that is currently available.

42. I am not aware of any side deals or other arrangements that would evidence a lack of good faith. Further, while I recognize that Binance.US has been cooperating with a variety of regulatory bodies internationally, I have no knowledge of Binance.US engaging in any improper action or inaction, which would cause or permit the Asset Purchase Agreement or the Sale Transaction to be avoided or impose any costs or damages. All that said, I am not an authorized representative of Binance.US nor am I in a position to “vouch” for the bona fides of Binance.US. And if events since May 2022 have taught us anything, it is that the benefits of having a decentralized and largely unregulated cryptocurrency business are counterbalanced by the challenges in identifying and preventing fraud.

### **CONCLUSION**

43. The Plan and the Sale Transaction will provide the greatest currently available recovery to creditors, allow the Debtors to facilitate an efficient resolution of these chapter 11 cases, and give customers the opportunity to migrate to Binance.US’s market-leading trading platform to trade and store cryptocurrency upon consummation of the Sale Transaction. Further, in the event that the Debtors determine that the Sale Transaction is not the highest and best option available for their stakeholders under the circumstances, they have the right to, and will, toggle to

Liquidation Transaction provided under the Plan to quickly and efficiently return cryptocurrency to creditors and facilitate the expedient resolution of these chapter 11 cases.

44. For these reasons, I support confirmation of the Debtors' Plan.

*[Remainder of page intentionally left blank.]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: February 28, 2023

Respectfully submitted,

/s/ Brian Tichenor

Brian Tichenor  
Managing Director  
Moelis & Company LLC

*Investment Banker for the Debtors*

Joshua A. Sussberg, P.C.  
Christopher Marcus, P.C.  
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**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

_____	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
_____	)	

**DECLARATION OF MARK A. RENZI  
IN SUPPORT OF CONFIRMATION OF THE THIRD  
AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND ITS  
DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

I, Mark. A. Renzi, hereby declare under penalty of perjury, as follows:

1. I submit this Declaration in support of confirmation of the *Third Amended Joint Chapter 11 Plan of Voyager Digital Holdings, Inc., and Its Debtor Affiliates* [Docket No. 852] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”), and the *Debtors’ Memorandum of Law In Support of (I) Final Approval of the Second Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code and (II) an Order Confirming the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Confirmation Brief”)<sup>2</sup>, filed contemporaneously herewith. I am a Managing Director with Berkeley Research Group, LLC (“BRG”) and have served as a financial advisor to Voyager Digital Holdings, Inc. since July 5, 2022.

2. The statements in this declaration are, except where specifically noted, based on (a) my personal knowledge or opinion of the Debtors’ operations and finances, (b) my personal knowledge, belief, or opinion, (c) information I have received from the Debtors’ employees or advisors and/or other employees of BRG, or (d) from the Debtors’ records maintained in the ordinary course of their business. If called to testify, I could and would testify competently to the facts set forth herein.

3. I am not being specifically compensated for this testimony other than through payments that may be received by BRG as a professional retained by the Debtors.

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings given to such terms in the Plan or Confirmation Brief, as applicable.

## **I. Qualifications**

4. I am a Managing Director and the Head of the Corporate Finance Financial Institutions Group for BRG, the financial advisor to the Debtors.

5. BRG's corporate finance practice consists of senior financial, management consulting, accounting, and other professionals who specialize in providing financial, business, and strategic assistance typically in distressed business settings. BRG has a wealth of experience in providing financial advisory services in in- and out-of-court restructuring, sale, and wind down scenarios, and enjoys an excellent reputation for services it has rendered in large and complex chapter 11 cases on behalf of debtors and creditors throughout the United States. BRG professionals have significant restructuring and industry experience assisting distressed companies with financial and operational challenges and working with management teams and boards of directors of large companies facing financial challenges similar to those of the Debtors. BRG regularly assists large and complex businesses similar to the Debtors.

6. BRG has acted as financial advisor, crisis manager, and corporate officer in middle market to large multinational companies in crisis or those in need of performance improvement in specific financial and operational areas across a wide array of industries. Moreover, the professionals at BRG have assisted and advised debtors, creditors, creditors' committees, bondholders, investors, and others in numerous bankruptcy cases, including the bankruptcy cases of *Intelsat S.A.*; *Liberty Power Holdings, LLC*; *The Collected Group, LLC*; *CBL & Associates Properties, Inc.*; *Hospital Acquisition LLC (d/b/a LifeCare)*; *rue21, inc.*; *Sports Authority Holdings, Inc.*; *Specialty Retail Shops Holding Corp. (a.k.a. Shopko)*; *Brookstone Holding Corp.*; *American Apparel LLC*; *Rentpath Holdings, Inc.*; *MF Global Holdings, Ltd.*; *Le Tote, Inc.*; *Chrysler (a.k.a. Old Carco LLC)*; *Southern Foods Group*; *Speedcast International Limited*; *The*



*Hertz Corporation, LLC; Borden Dairy Company; Nine West Holdings, Inc.; Verity Health System of California, Inc.; Real Industry, Inc.; M & G USA Corporation; Peabody Energy Corporation; Sabine Oil & Gas Corporation; Molycorp Inc.; Refco, Inc.; Spiegel Inc.; W.R. Grace; Penson Worldwide; Dynegy Holdings, LLC; Calpine Generating Company; and Nortel Networks Inc.*<sup>3</sup> Currently, in addition to serving as financial advisor to the Debtors in these chapter 11 cases, I am the Chief Restructuring Officer of BlockFi and its related debtors and debtors in possession,<sup>4</sup> and I am one of the leaders of the team advising the Official Committee of Unsecured Creditors in the Genesis Global HoldCo, LLC, chapter 11 proceedings.<sup>5</sup>

7. I am a member of the Association of Insolvency and Restructuring Advisors, as well as the Turnaround Management Association. I have more than twenty-five (25) years of business experience, with approximately twenty (20) years of financial consulting experience, including liquidity and capital structure assessment, debt and equity restructuring advice, and identification of reorganization alternatives. During the course of my career, I have personally provided restructuring services on more than thirty-five (35) engagements in both out-of-court workout situations and in-court reorganizations. Further, I have served in interim management positions and advised distressed companies with day-to-day management activities, including development of pro forma financials, cash flow management, cost rationalization, and identification of liquidity enhancing activities. In addition to operational turnarounds, I have assisted in financial restructurings, including refinancings, recapitalizations, debt-for-equity swaps, and strategic mergers and acquisitions.

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<sup>3</sup> The professionals were employed in certain of these engagements prior to joining BRG.

<sup>4</sup> In re BlockFi Inc., No. 22-19361 (MBK), U.S.B.C., D.N.J.

<sup>5</sup> In re Genesis General HoldCo LLC, No. 23-10063 (SHL), U.S.B.C., S.D.N.Y.

8. Prior to joining BRG, I was a Senior Managing Director at a global business advisory firm with a 15-year tenure. I also worked at a boutique money management firm in New York evaluating equity and commodity derivative portfolios, and held various positions in FP&A, business plan development, treasury, and global cash management. I received a B.A. in Economics from Washington College and an M.S. in Finance from Boston College.

9. Since the Debtors engaged BRG in July 2022, I have worked closely with the Debtors' management and other professionals on the Debtors' restructuring efforts, including assisting the Debtors in preparing cash flow projects, budgets, and other reports, as well as assisting with strategic operations including, most recently, the rebalancing of the Debtors' cryptocurrency portfolio and preparation for execution on the proposed Plan, whether that ultimately be through a Sale Transaction with Binance.US or the Liquidation Transaction. I lead the BRG team advising the Debtors. In this capacity I have become well-acquainted with the Debtors' restructuring efforts. I am also familiar with the terms and provisions of the Plan, as well as all previously submitted plans—I participated directly in the due diligence, discussions, and analysis related to the Plan, as well as all previously submitted plans.

10. The Debtors requested that I address for the Court and parties-in-interest, among other things described in more detail below: (1) the purpose of the Plan; (2) the ability of the Plan, including the Sale Transaction or the Liquidation Transaction to satisfy the "best interests test" as defined in section 1129(a)(7) of the bankruptcy code; (3) the feasibility of the Plan, including the Sale Transaction or the Liquidation Transaction as applicable, under section 1129(a)(11) of the bankruptcy code; (4) the need for key Debtor employees to continue providing services to the Debtors (and the Wind-Down Estate) in order to successfully effectuate the Plan, including the

Sale Transaction or the Liquidation Transaction; and (5) whether or not appointment of a trustee in these chapter 11 cases is warranted under the circumstances.

## **II. Background**

11. To understand why I reach the opinions described below, it is necessary to understand Voyager's operational history as well as the history of these chapter 11 cases.

### **A. Operations**

12. Voyager's primary operations consist of (i) brokerage services, (ii) custodial services through which customers earn interest and other rewards, and (iii) lending programs. All of Voyager's services are accessible through a mobile application that users can download on their smartphones and other smart devices.

13. **Brokerage Services.** Voyager operates as a cryptocurrency "agency broker," matching its customers with counterparties who can facilitate the customers' desired trades. The Company's platform surveys approximately a dozen exchanges and liquidity providers and executes trades through a proprietary algorithm that evaluates the price, certainty of execution, reliability of the trading venue, and speed of execution.

14. **Custodial Services.** Customers store their digital assets on the Voyager platform and, unless they "opted out" of the rewards program (which all customers had the opportunity to do), earned interests on deposits which, prior to the Petition Date, were primarily paid in three ways: (i) PIK Interest; (ii) through VGX and the Voyager Loyalty Program; and (iii) through "staking" programs. Customers could also sign up for a Voyager Debit Card.

15. **Lending Program.** As part of providing customers with PIK Interest, Voyager lent cryptocurrency deposited on its platform to third parties, sometimes on a collateralized basis but often on an uncollateralized basis. Customers were advised of this through clear language in the

Customer Agreement. Such third parties paid Voyager a pre-negotiated interest rate that is payable in either cash or payment-in-kind (*i.e.*, a Bitcoin loan accrues interest payable in Bitcoin). Voyager's lending program was an integral part of its business and necessary to provide customers with a meaningful return on their assets. Loans made by the Company that were outstanding as of the Petition Date were as follows:

<i><b>Loan Counterparty</b></i>	<i><b>Borrowing Rates</b></i>	<i><b>Amount Outstanding (in thousands)</b></i>
Alameda Research Ltd.	1% - 11.5%	\$376,784
Three Arrows Capital	3% - 10%	\$654,195
Genesis Global Capital, LLC	4% - 13.5%	\$17,556
Wintermute Trading Ltd	1% - 14%	\$27,342
Galaxy Digital LLC	1% - 30%	\$34,427
Tai Mo Shan Limited	10%	\$13,770
Other	4% - 8%	\$751
<i><b>Total Loan Obligations</b></i>		<i><b>\$1,124,825</b></i>

## **B. The Market Crashes and Voyager Seeks Chapter 11 Protection**

16. Cryptocurrency is inherently volatile, and prices vacillate by the second due to constant trading occurring 24 hours a day, seven days a week. 2022 saw historic levels of volatility in the markets generally, and the cryptocurrency markets were not immune. Bitcoin slumped over 65% from January 1, 2022 to year-end:

18. On May 7, 2022, \$2 billion of UST was unstaked and immediately sold. This dropped UST’s price to \$0.91. UST holders saw the “de-peg” and rushed to unstake and sell their coins.

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20. Many cryptocurrency-focused hedge funds, and other cryptocurrency companies, owned LUNA. Some were unable to sell their LUNA under staking agreements and were forced to incur up to a 99% loss on their investment. And in mid-June, reportedly due in part to the collapse of LUNA, Three Arrows Capital (“3AC”), a major player in the space, collapsed.

21. On June 15, 2022, 3AC confirmed that it had suffered at least some loss from the LUNA collapse and that it had hired legal and financial advisors to explore potential liquidity solutions. Shortly thereafter, on June 27, 2022, 3AC was ordered by a court in the British Virgin Islands to commence liquidation proceedings.

22. Voyager was a victim of 3AC’s collapse. As stated above and as disclosed to customers, to provide customers with a yield on the assets they store with Voyager, Voyager loans out a portion of its cryptocurrency reserves to third parties. One such loan was to 3AC. In March 2022, the Company entered into a master loan agreement with 3AC (the “3AC Loan”). Pursuant to the 3AC Loan, the Company agreed to lend 15,250 Bitcoins and 350 million USDC to 3AC. The 3AC Loan was callable at any time by the Company. 3AC fully drew down on the 15,250 Bitcoins and 350 million USDC.

23. After the LUNA crash in 2022, Voyager began to assess 3AC’s downside exposure and the likelihood of repayment under the 3AC Loan. Voyager then made an initial request for a repayment by 3AC of \$25 million of USDC by June 24, 2022, and subsequently requested repayment of the entire outstanding balance of Bitcoin and USDC by June 27, 2022. 3AC did not repay either requested amount. Accordingly, on June 27, 2022, Voyager issued a notice of default to 3AC for failure to make the required payments under the 3AC Loan.

24. Once it became clear that 3AC had significant exposure to the crash, Voyager’s management team swiftly took action to identify potential sources of liquidity to stabilize



Voyager's business and remain adequately capitalized, and it ultimately became necessary that Voyager begin marketing its business and enter these chapter 11 proceedings.

### **C. Voyager Markets a Sale, AlamedaFTX Implodes**

25. Beginning on or about June 20, 2022, the Debtors commenced a marketing process to solicit interest in a sale to a third-party investor. However, discussions with interested parties revealed that an in-court process for the Debtors' assets would be necessary to consummate the most value-maximizing transaction for stakeholders. Accordingly, the Debtors commenced these chapter 11 cases on July 5, 2022 (the "Petition Date"), and continued their marketing efforts.

26. As discussed in greater detail in the *Declaration of Brian Tichenor in Support of Confirmation of the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, filed contemporaneously herewith (the "Moelis Declaration"), the Debtors' multi-month marketing process culminated in an auction process on September 13, 2022, to identify the highest and best bid from interested parties. The Debtors' financial advisor, Moelis, scrutinized the bids along with me and my team at BRG, the Debtors' legal advisors, and the Debtors' management team, Board of Directors, and independent directors, and ultimately concluded AlamedaFTX was the best option because all believed—based on what is now known to be fraud—that AlamedaFTX could timely close and effectuate the sales process and had the wherewithal to do so. The Court approved the Debtors' entry into a purchase agreement with AlamedaFTX on October 20, 2022. Confirmation was originally set for December 8, 2022.

27. On November 2, 2022, public reports began to circulate citing leaked, internal financial statements and questioning the health and liquidity of both FTX and Alameda Research

LLC (and their various affiliates, none of which appear to have operated independently). That and other public reporting began a death spiral for AlamedaFTX.

28. On November 8, 2022, FTX’s CEO stated publicly that FTX was experiencing a “liquidity crunch” due to user withdrawals.<sup>6</sup> The Debtors and their advisors inquired with FTX and its advisors, who either could not or would not share any material information about what was happening. On November 11, 2022, AlamedaFTX began the process of filing for bankruptcy.<sup>7</sup> The counterparty to the APA with the Debtors, West Realm Shires d/b/a FTX US, did not file until November 14, 2022.

#### **D. Voyager Markets a Sale Again, Reaches Agreement with Binance.US**

29. On November 10, 2022, the day before AlamedaFTX publicly filed for bankruptcy, AlamedaFTX agreed to waive the “no shop” provision of the AlamedaFTX Purchase Agreement. The Debtors promptly restarted their sales process, and engaged in extensive negotiations with the interested parties over the course of approximately one month.

30. Ultimately, on December 18, 2022, Debtor Voyager Digital, LLC (the “Seller”) executed an asset purchase agreement (the “Asset Purchase Agreement”) with BAM Trading Services Inc. (“Binance.US” or “Purchaser” and the transaction, “Sale Transaction”). The Asset Purchase Agreement provided that the Sale Transaction would be consummated through the Plan.

31. The Debtors value the Sale Transaction at approximately \$1.022 billion, comprising (a) the value of cryptocurrency on the Voyager platform as of a date to be determined, which as of December 18, 2022, is estimated to be \$1.002 billion, plus (b) additional consideration, which is estimated to provide at least \$20 million of incremental value. The Sale Transaction

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<sup>6</sup> @SBF\_FTX, Twitter (Nov. 8, 2022).

<sup>7</sup> @SBF\_FTX, Twitter (Nov 11, 2022).

includes reimbursement by Binance.US of up to \$15 million of Seller's expenses, and provides a \$10 million reverse termination fee payable to the Seller by Binance.US to compensate the Debtors' estates in the event that Binance.US cannot consummate the transaction.

32. The Plan also allows the Debtors to toggle to either a higher and better third-party bid (should one emerge) or to a self-liquidation if the Debtors determine, in their business judgment, that the Sale Transaction is no longer the best path forward for the Debtors' creditors (the "Liquidation Transaction"). The Plan was negotiated heavily between many parties, including the Debtors and the Official Committee of Unsecured Creditors (the "Committee"). Thousands of hours have been invested in creating as good of an outcome for creditors as is possible under the circumstances and the Plan (if confirmed) does exactly that.

### **III. The Plan Satisfies the Confirmation Requirements**

33. For the reasons detailed below, I believe that the Plan satisfies the applicable bankruptcy code requirements for confirmation of a plan of reorganization. I set forth the reasons for such belief below, except where such compliance is apparent on the face of the Plan, the Plan Supplement, and the related documents or where it will be the subject of other evidence introduced at the Combined Hearing.

#### **A. The Plan Fully Complies with the Applicable Provisions of the Bankruptcy Code — § 1129(a)(1).**

34. I understand that section 1129(a)(1) of the bankruptcy code requires a chapter 11 plan to comply with all applicable provisions of the bankruptcy code.

##### **1. Proper Classification of Claims and Interests — § 1122 and § 1123(a)(1).**

35. I understand that sections 1122 and 1123(a)(1) of the bankruptcy code govern the manner in which a debtor may classify claims and interests. I believe that the Plan's classification of Claims and Interests satisfies the requirements of section 1122 of the bankruptcy code because

the Plan places Claims and Interests into eleven separate Classes, with the Claims and Interests in each Class differing from the Claims and Interests in each other Class in a legal or factual nature or based on other relevant criteria.

36. I believe that valid business, legal, and factual reasons justify the separate classification of the particular Claims or Interests into the Classes created under the Plan, and no unfair discrimination exists between or among Holders of Claims and Interests. In particular, I understand that general unsecured claims are broken into three classes, OpCo General Unsecured Claims, HoldCo General Unsecured Claims, and TopCo General Unsecured Claims to comport with certain requirements of the bankruptcy code and to account for the fact that Holders of such claims have legal recourse against only specific Debtors. Holders of Account Holder Claims are classified separately from Holders of other General Unsecured Claims due to the unique nature and basis for the Account Holder Claims, which are made up of claims held by customers on the Voyager platform. Further, Alameda Loan Facility Claims are properly classified separately as such Claims are asserted against multiple Debtor entities and are Claims on account of an unsecured loan.

**2. Specification of Unimpaired Classes — § 1123(a)(2).**

37. I understand that Article III.B of the Plan identifies each Class that is Unimpaired.

**3. Treatment of Impaired Classes — § 1123(a)(3).**

38. I understand that Article III.B of the Plan identifies each Class that is Impaired and describes the treatment thereof.

**4. Equal Treatment of Similarly Situated Claims and Interests — § 1123(a)(4).**

39. I understand that section 1123(a)(4) of the bankruptcy code requires that the Plan provide the same rights and treatment to each holder of claims or interests as other holders of

allowed claims or interests within such holders' respective class. I believe that the Plan satisfies this requirement, as all Holders of Allowed Claims or Interests will receive the same rights and treatment as other Holders of Allowed Claims or Interests within such Holders' respective Class. In particular, all Account Holder Claims will be "dollarized" as of the Petition Date, and the Holders thereof will receive recoveries proportional to the "dollarized" value of their account holdings relative to the aggregate dollarized value of all customer accounts. The form such distributions take will be a function of the laws and regulations of jurisdictions in which Account Holders reside.

**5. Adequate Means for Implementation — § 1123(a)(5).**

40. I understand that section 1123(a)(5) of the bankruptcy code requires that a chapter 11 plan provide adequate means for a plan's implementation. I believe that the Plan provides adequate means for implementation as required under section 1123(a)(5) of the bankruptcy code. Among other things, Article IV of the Plan:

- i. constitutes a good faith compromise and settlement of all Claims, Interests, Causes of Action and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan;
- ii. authorizes the applicable Debtors to take all actions necessary or appropriate to effectuate the Plan, including those actions necessary to effectuate the Restructuring Transactions, as set forth in the Plan Supplement, as the same may be modified or amended (in accordance with the terms of the Plan) from time to time prior to the Effective Date;
- iii. authorizes the Debtors to consummate the Restructuring Transactions, including (i) all transactions necessary to provide for the purchase of the Acquired Assets by

- Purchaser under the Asset Purchase Agreement, if applicable, (ii) the distribution of Cryptocurrency or Cash pursuant to the Asset Purchase Agreement, as applicable; (iii) the execution of the Plan Administrator Agreement and any transactions necessary or appropriate to form the Wind-Down Debtor; and (iv) the transfer of the Wind-Down Debtor assets to the Wind-Down Debtor;
- iv. provides for consummation of the Sale Transaction or the Liquidation Transaction, as applicable;
  - v. effectuates the Employee Transition Plan;
  - vi. provides for the retention of certain Non-Released D&O Claims to be pursued, settled, or resolved by the Wind-Down Debtor;
  - vii. implements the D&O Settlement;
  - viii. creates the Wind-Down Debtor and appoints the Plan Administrator and Wind-Down Debtor Oversight Committee;
  - ix. provides sources of consideration for Plan distributions;
  - x. effectuates the cancellation of certain notes, instruments, certificates and other documents; and
  - xi. preserves certain Vested Causes of Action.

41. On the Effective Date, the Wind-Down Debtor Assets shall, subject to the Plan Administer Agreement, be transferred to and vest in the Wind-Down Debtor. The Wind-Down Debtor will be charged with winding down the Debtors' estates and will be the successor-in-interest to the Debtors, and a successor to the Debtors' rights, title and interest to the Wind-Down Debtor Assets. The Wind-Down Debtor will be managed by the Plan Administrator and will be subject to a Wind-Down Debtor Oversight Committee.



**6. Prohibition of Issuance of Non-Voting Stock — § 1123(a)(6).**

42. I understand that section 1123(a)(6) of the bankruptcy code requires that a debtor's organizational documents prohibit the issuance of nonvoting equity securities. The Debtors are winding down, and there will not be any issuance of nonvoting equity securities or preferred stock. Accordingly, I believe section 1123(a)(6) of the bankruptcy code is inapplicable to the Plan.

**7. Selection of Officers and Directors — § 1123(a)(7).**

43. I understand that section 1123(a)(7) of the bankruptcy code requires that any provisions in the Plan with respect to the manner of selection of any director, officer, or trustee be consistent with the interests of creditors, equity holders, and public policy. I believe that the Plan satisfies this requirement by providing that, on the Effective Date, the authority, power, and incumbency of the persons acting as directors and officers of the Debtors will be deemed to have resigned, solely in their capacities as such, and the Plan Administrator will be appointed by the Debtors as the sole director and the sole officer of the Wind-Down Debtor and will succeed to the powers of the Debtors' directors and officers. The Debtors filed the Plan Administrator Agreement with the Plan Supplement, which provides the identity of the Plan Administrator and Wind-Down Oversight Committee.

**8. Discretionary Contents of the Plan — § 1123(b).**

44. I understand that section 1123(b) of the bankruptcy code sets forth various discretionary provisions that may be incorporated into a chapter 11 plan. I understand that pursuant to section 1123(b) of the bankruptcy code, among other things, a plan may: (a) impair or leave unimpaired any class of claims or interests; (b) provide for the assumption or rejection of executory contracts or unexpired leases not previously rejected; (c) provide for the settlement or adjustment

of any claim or interest belonging to a debtor; or (d) include any other provision not inconsistent with applicable provisions of chapter 11.

45. I believe that the Plan is consistent with section 1123(b) of the bankruptcy code. **First**, the treatment of Classes under the Plan renders such Classes either Impaired or Unimpaired. Class 1 (Secured Tax Claims) and Class 2 (Other Priority Claims) are Unimpaired, and Class 3 (Account Holder Claims), Class 4A (OpCo General Unsecured Claims), Class 4B (HoldCo General Unsecured Claims), Class 4C (TopCo General Unsecured Claims), Class 5 (Alameda Loan Facility Claims), Class 6 (Section 510(b) Claims), and Class 9 (Existing Equity Interests) are Impaired under the Plan. Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests) may be Impaired or Unimpaired under the Plan. **Second**, Article V of the Plan satisfies section 1123(b)(2) because it provides that, on the Effective Date, all Executory Contracts and Unexpired Leases, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, that, as of the Effective Date, were not previously rejected, assumed, or assumed and assigned, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the bankruptcy code, except to the extent set forth in the plan. **Third**, for the reasons set forth in Section II below, I believe that the Plan's release, exculpation, and injunction provisions are consistent with section 1123(b) of the bankruptcy code. **Finally**, the Plan also effectuates the Sale Transaction contemplated by the Asset Purchase Agreement or the Liquidation Transaction as applicable.

46. I submit that each of these provisions are appropriate because, among other things, they are (a) the product of arm's-length negotiations, (b) given for valuable consideration, (c) fair and equitable and in the best interests of the Debtors, their estates, and these chapter 11 cases, and

(d) consistent with the relevant provisions of the bankruptcy code and Second Circuit law as explained to me.

**9. The Debtors Will Cure Monetary Defaults of Any Assumed Executory Contracts or Unexpired Leases — § 1123(d).**

47. I understand that section 1123(d) of the bankruptcy code requires that cure amounts be determined in accordance with the underlying agreement and nonbankruptcy law.

48. I believe that the Plan complies with section 1123(d) of the bankruptcy code. The Plan provides for the satisfaction of cure costs under each Executory Contract and Unexpired Lease to be assumed under the Plan on the Effective Date or in the ordinary course of business, subject to the limitations described in Article V of the Plan, and that the Wind-Down Debtor or the Purchaser, as applicable, shall pay any Cure Amounts on the Effective Date.

**10. The Debtors Complied with the Solicitation Requirements of the Bankruptcy Code — § 1129(a)(2).**

49. I understand that section 1129(a)(2) of the bankruptcy code requires that plan proponents comply with the applicable provisions of the bankruptcy code and, in that regard, is specifically intended to ensure compliance with the disclosure and solicitation requirements set forth in sections 1125 and 1126 of the bankruptcy code. Based on my review of information provided by the Debtors and their advisors, along with the Voting Report, I believe that the Debtors have complied with sections 1125 and 1126 of the bankruptcy code.

**11. The Debtors Proposed the Plan in Good Faith — § 1129(a)(3).**

50. I understand that section 1129(a)(3) of the bankruptcy code requires that a chapter 11 plan be proposed in good faith and not by any means forbidden by law. Here, there is no question in my mind that section 1129(a)(3) has been satisfied. The Plan was proposed by the Debtors with honesty, good intentions, and a desire to maximize stakeholder recoveries under extraordinarily challenging circumstances. That is particularly so after the historic FTX collapse

derailed the prior proposed plan, when the Debtors, their employees, their advisors, and the Committee and its advisors, worked together to find another transaction partner and pivot to the current Plan—which includes flexibility to toggle to the Liquidation Transaction if necessary—quickly. Moreover, the Sale Transaction effectuated by the Plan is the product of extensive, arm’s-length negotiations with numerous written and verbal proposals and counterproposals exchanged among sophisticated parties over the course of several months. Further, the Liquidation Transaction contemplated under the Plan ensures that Holders of Claims can receive the highest recoveries available on the shortest timeline in the event that the Sale Transaction is not ultimately consummated.

**12. Payment of Professional Fees and Expenses Are Subject to Court Approval — § 1129(a)(4).**

51. I understand that section 1129(a)(4) of the bankruptcy code requires a Court to approve certain fees and expenses that either a plan proponent, debtor, or person receiving property distributions under the plan has paid as reasonable. I can confirm that Professional Fee Claims and corresponding payments are subject to prior Bankruptcy Court approval and the reasonableness requirements under sections 328 or 330 of the bankruptcy code. Article II.B of the Plan, moreover, provides that Professionals shall file all final requests for payment of Professional Fee Claims no later than 45 days after the Effective Date, thereby providing an adequate period of time for interested parties’ to review such Professional Fee Claims.

**13. The Governance Disclosure Requirements Do Not Apply to the Debtors or Are Satisfied — § 1129(a)(5).**

52. I understand that section 1129(a)(5) of the bankruptcy code requires (a) that a plan proponent disclose the identity and affiliation of any individual proposed to serve as a director or officer of the debtor, or a successor thereto, under a chapter 11 plan, (b) that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity

security holders and with public policy, and (c) that a plan proponent disclose the identities or affiliations of insiders to be employed or retained by the reorganized debtors as directors and officers and the nature of any compensation for such insider. Because the Plan provides for the vesting of the Debtors' remaining assets in the Wind-Down Debtor and the subsequent dissolution of the Debtors, I understand that section 1129(a)(5) of the bankruptcy code is not applicable to these chapter 11 cases. Nevertheless, I believe that Article IV.H of the Plan and the Plan Supplement satisfy the requirements of section 1129(a)(5) of the bankruptcy code, to the extent applicable, as the Debtors disclosed the method of selection, compensation, and affiliations of the Plan Administrator and the Wind-Down Oversight Committee.

**14. The Plan Does Not Require the Government to Approve Rate Changes — § 1129(a)(6).**

53. I have been advised that the Debtors are not subject to regulations that would invoke section 1129(a)(6)'s requirement that they seek regulatory approval for rate changes provided for under the Plan. The Plan does not propose any rate changes. As such, I do not believe that section 1129(a)(6) is applicable to the Plan.

**15. The Plan Satisfies the Best Interests Test — § 1129(a)(7).**

54. As fulsomely discussed in Section IV, *infra*, I understand that section 1129(a)(7) of the bankruptcy code requires that any chapter 11 plan must satisfy the "best interests of creditors" test, which provides that holders of claims or interests in impaired, non-accepting classes must receive under a chapter 11 plan at least as much as they would in a liquidation. It is my opinion that it does.

**16. Acceptance by Impaired Classes — § 1129(a)(8).**

55. I understand that the bankruptcy code generally requires that each class of claims or interests must either accept the plan or be unimpaired under the plan. I further understand that

if any class of claims or interests rejects the plan, the plan must satisfy the “cram down” requirements with respect to the claims or interests in that class. I understand that Class 3 (Account Holder Claims), Class 4B (HoldCo General Unsecured Claims), and Class 4C (TopCo General Unsecured Claims) voted to accept the Plan and the voting has been overwhelmingly in favor of the Plan. I understand that no holders of OpCo General Unsecured Claims voted on the Plan. However, I understand that because certain Classes are or may be deemed to reject the Plan, the Debtors do not satisfy section 1129(a)(8) of the bankruptcy code. However, even though certain Classes are or may be deemed to reject the Plan, I understand that the Debtors still satisfy section 1129(b) as at least one Impaired Class voted to accept the Plan.

**17. Priority Cash Payments — § 1129(a)(9).**

56. I understand that the bankruptcy code generally requires that claims entitled to administrative priority must be repaid in full in cash on the effective date or receive certain other specified treatment that the Holder of such claim has agreed to. I understand that the Plan provides that each Holder of an Allowed Administrative Claim allowed on or prior to the Effective Date will receive payment in full in Cash no later than thirty (30) days after the Effective Date or as soon as reasonably practicable thereafter. Article II.A of the Plan generally provides that each Holder of Allowed Administrative Claims shall receive payment in full in Cash or such other treatment as to render such holders unimpaired. Finally, I understand that Allowed Priority Tax Claims will be treated in accordance with the requirements of the bankruptcy code. Accordingly, I believe that the Plan fully complies with and satisfies all of the requirements of section 1129(a)(9) of the bankruptcy code.

**18. At Least One Impaired Class Voted to Accept the Plan — § 1129(a)(10).**



57. I understand that the bankruptcy code provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan “without including any acceptance of the plan by any insider,” as an alternative to the requirement under section 1129(a)(8) of the bankruptcy code that each class of claims or interests must either accept the plan or be unimpaired under the plan. I understand that the following Impaired Classes of Claims entitled to vote on the Plan—Classes 3, 4B, and 4C—voted to accept the Plan, independent of any insiders’ votes.

**19. The Plan is Feasible — § 1129(a)(11).**

58. As fulsomely discussed in Section V, *infra*, I understand that section 1129(a)(11) of the bankruptcy code requires a court to determine that a chapter 11 plan is feasible and that confirmation of such plan is not likely to be followed by the liquidation or further financial reorganization of the Debtors (or any successors thereto) unless such liquidation or reorganization is proposed in the Plan. Provided that the Plan is confirmed as proposed, without material changes, I believe that consummation of either the Sale Transaction or the Liquidation Transaction is feasible, and I believe the Plan satisfies the feasibility requirements of section 1129(a)(11).

**20. The Plan Provides for Payment of All Fees — § 1129(a)(12).**

59. I understand that section 1129(a)(12) of the bankruptcy code requires the payment of all fees payable under 28 U.S.C. § 1930. Article XII.C of the Plan includes an express provision requiring payment of all fees in compliance with the bankruptcy code. Accordingly, I believe the Plan satisfies the requirements of section 1129(a)(12) of the bankruptcy code.

**21. The Plan Complies with Section 1129(a)(13) of the Bankruptcy Code.**

60. It is my understanding that section 1129(a)(13) of the bankruptcy code requires that any applicable retiree benefits will continue to be paid post effective date at the level established

by agreement or by court order pursuant to section 1114 of the bankruptcy code at any time prior to confirmation of the Plan, for the duration of the period which the debtor has obligated itself. I do not believe retiree benefits as defined by section 1129(a)(13) are implicated by the Plan.

**22. Sections 1129(a)(14) through 1129(a)(16) of the Bankruptcy Code Do Not Apply to the Plan.**

61. Based on my knowledge of the Debtors' business and information provided by the Debtors' advisors, I believe that sections 1129(a)(14) through 1129(a)(16) of the bankruptcy code do not apply to the Plan because the Debtors are not subject to domestic support obligations, are not "individuals," and are not nonprofit corporations.

**23. The Plan Complies with the Other Provisions of Section 1129 of the Bankruptcy Code.**

**i. The Cram Down Provisions are Appropriate — § 1129(b).**

62. I understand that if all applicable requirements of section 1129(a) of the bankruptcy code are satisfied, other than section 1129(a)(8), a plan may still be confirmed so long as the requirements set forth in section 1129(b) are satisfied. I believe that the Debtors satisfied all applicable requirements of section 1129(b) of the bankruptcy code as Impaired Classes 3, 4B, and 4C voted to accept the Plan, thus permitting the Debtors to "cram down" the Plan pursuant to section 1129(b) on any Class deemed to reject the Plan.

**ii. Only One Plan Is Eligible to Be Confirmed — § 1129(c).**

63. I understand that section 1129(c) of the bankruptcy code prohibits the confirmation of multiple plans. Section 1129(c) of the bankruptcy code is not implicated here because there is only one proposed plan of reorganization.

**iii. The Principal Purpose of the Plan Is Not the Avoidance of Taxes as Required Under Section 1129(d) of the Bankruptcy Code.**

64. The Plan was not filed for the purpose of avoidance of taxes or the application of section 5 of the Securities Act of 1933, as amended. Rather, the Debtors filed the Plan to accomplish their objective of efficiently and responsibly effectuating distributions to creditors in the face of unprecedented economic circumstances in a developing market and consummating the most value-maximizing transaction available. Moreover, I understand that no party that is a governmental unit, or any other entity, requested that the Bankruptcy Court decline to confirm the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. Accordingly, I believe that the Debtors satisfied the requirements of section 1129(d) of the bankruptcy code.

**iv. Section 1129(e) of the Bankruptcy Code Is Inapplicable.**

65. Lastly, I understand that section 1129(e) of the bankruptcy code does not apply to the Plan because none of the Debtors' chapter 11 cases is a "small business case" within the meaning of the bankruptcy code.

**IV. Liquidation Analysis**

66. I performed the Liquidation Analysis to address the ability of the Sale Transaction or Liquidation Transaction to satisfy the "best interests of creditors" test as defined in section 1129(a)(7) of the bankruptcy code, which provides that holders of claims or interests in impaired, non-accepting classes must receive under a chapter 11 plan at least as much as they would in a liquidation.<sup>8</sup>

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<sup>8</sup> The results of my Liquidation Analysis along with a summary of my assumptions were set forth as Exhibit B to the *Second Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and its Debtor Affiliates* [Docket No. 863]. In this Declaration, I discuss the Liquidation Analysis in detail.

67. To prepare this Liquidation Analysis, and working with my team at BRG, the Debtors, and the Debtors' other advisors, along with the advisors to the Committee, I estimated proceeds, costs, and resulting recoveries in three separate scenarios: (1) consummation of the Sale Transaction; (2) consummation of the Liquidation Transaction; and (3) a chapter 7 liquidation. For the chapter 7 liquidation scenario, I estimated both a "high case" and a "low case." As discussed below, the primary difference between the high case and the low case is the estimated proceeds from liquidation of the coin portfolio, which is difficult to estimate given the nature of the cryptocurrency market but which will clearly be more challenging and less successful in the hypothetical chapter 7 scenario.

68. With respect to the chapter 7 liquidation scenario, I assumed the Debtors would convert their current chapter 11 cases to cases under chapter 7 of the bankruptcy code on or about April 18, 2023 (the "Conversion Date"), absent confirmation of the Plan. I assumed that on the Conversion Date, the Bankruptcy Court would appoint a chapter 7 trustee ("Trustee"), and that the Trustee would immediately sell or surrender all of the Debtors' assets and the cash proceeds of those sales, net of the liquidation-related costs, would then be distributed to creditors in accordance with the applicable law.

69. More specifically, in order to estimate the creditor recoveries in each scenario, I performed the following four steps:

(i) **Step 1 - Estimated Gross Proceeds**

70. For the chapter 7 liquidation scenario, I estimated the cash proceeds that the Trustee would generate if the Debtor's chapter 11 case were converted to a chapter 7 case and the assets of the Debtor's bankruptcy estate were liquidated.

71. For the Sale Transaction and Liquidation Transaction scenarios, I estimated the proceeds that would be generated if each transaction were consummated. For the Sale Transaction scenario, I assumed the Plan would be confirmed on the same date as the hypothetical Conversion Date. I assumed the Liquidation Transaction would be consummated on a later schedule, with a date of June 18, 2023. This is because the Liquidation Transaction assumes that the parties to the Sale Transaction would work to close that deal until April 18, 2023, and the Debtors would toggle to the Liquidation Transaction only after they determined during the course of that process that the Sale Transaction would not produce the highest and best outcome for creditors. After that pivot, the Debtors would need additional time to ramp up vendors, internal infrastructure, and third-party developers necessary to support trading activity (as costs were reduced to the extent possible over the course of the case) and to sell unsupported coins into U.S. dollars in order to effectuate the self-liquidation contemplated in the Liquidation Transaction.

72. The Debtors consist of three corporate entities, Voyager Digital Ltd. (“TopCo”); Voyager Digital Holdings, Inc. (“HoldCo”); and Voyager Digital, LLC (“OpCo”). The specific assets and claims discussed here originate from one of the three specific entities, which my analysis takes into account. However, for purposes of this discussion, I describe the analysis on a consolidated basis, referring to assets and liabilities belonging to the Debtors more generally.

73. I calculated the Estimated Gross Proceeds based on the value of assets at each entity as of October 31, 2022<sup>9</sup>—the date of the most recent unaudited financial statements that were available for my analysis. The specific sources of proceeds I estimated are as follows:

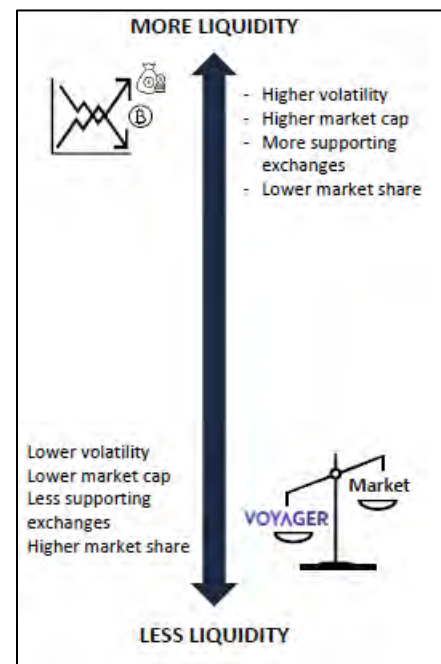
74. *Cash and Cash Equivalents.* I estimated Cash and Cash Equivalents by using the level of cash balance on hand on December 30, 2022, and projecting to the Conversion Date. I

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<sup>9</sup> With the exception of Cash/Cash Equivalents and Coin Liquidation Value, discussed later.

assumed starting cash and cash equivalents to be the same under the chapter 7 liquidation, Sale Transaction, and Liquidation Transaction scenarios.

75. *Coin Portfolio Liquidation.* The vast majority of the assets held by the Debtors, from which the majority of proceeds would be generated, are in Voyager’s coin portfolio. That coin portfolio comprises 106 different types of cryptocurrencies. I valued each cryptocurrency at its December 18, 2022, spot price. I then estimated how that spot price would be discounted due to certain risks discussed below. Given the volatility and ever-changing nature of the cryptocurrency market, the December 18, 2022, spot price is only illustrative, but it is instructive because it can be used to compare how any given spot price would move in a chapter 7 liquidation scenario, versus an organized and Debtor-led sale.



76. The main reason why the spot price would be discounted under the Sale Transaction, Liquidation Transaction, or chapter 7 liquidation scenarios (but more so in the chapter 7 liquidation, as I discuss below) involves what I refer to as “market-depth constraints.” A market-depth constraint refers to the fact that, where a particular token is subject to fewer transactions in the market, a mass sale of that cryptocurrency would “move the market”—that is, would result in a depreciation in cryptocurrency valuation at the time of that sale. During a hypothetical liquidation, tokens with highly liquid markets, such as Bitcoin or Ethereum, would see less (but still some) market-depth constraint. On the other hand, tokens in illiquid markets are anticipated to have greater market-depth constraints—that is, a mass sale would move the market more significantly.



77. In addition to market-depth constraints, numerous other risk factors, which I detail below, could also cause a discount against spot pricing.

78. *Headline Risk.* Headline Risk refers to how the value of a coin can be influenced by news and social media. Given the youth of the cryptocurrency market, coin valuation can be diminished by even unsubstantiated statements, including commentary regarding planned trades.

79. *Black Swan Events.* Black Swan Events refer to unpredictable market events that have severe downward consequences on cryptocurrency values. Recent examples include the AlamedaFTX collapse and the LUNA collapse.

80. *Conditions of Cryptomarket/Volatility.* The cryptomarket itself has recently been strained, both by mass liquidation events and the numerous cryptofirm bankruptcies. These events have removed liquidity from the market and created general uncertainty, exposing any cryptocurrency sale to greater down-market risk.

81. *Block Trading.* When engaging in block trades in less regulated markets, such as cryptocurrencies, there are several risks including, but not limited to, the risk that a bad actor can front-run a large trade and affect its outcome.

82. *Number of Supporting Exchanges.* Unlike more mature trade exchanges, cryptocurrency platforms offer only discrete trading paths for particular coins. This limits exchange options, increasing the risk that a less favorable exchange will occur.

83. *Asymmetric Information Issues.* Depending on what information is made publicly available, individual traders could ascertain the Debtors' portfolio position. If a position is ascertained during the liquidation process, that trader could potentially drive pricing up or down on particular coins to the Debtors' disadvantage.

84. *Conversion Factors.* In a liquidation event, all trades would be a particular coin for U.S. dollars. This conversion factor can be less favorable than other forms of exchanges (*e.g.*, exchanging of one token for another), and thus, could result in lower returns.

85. *Execution Capabilities.* The company and its experts better know the portfolio than a less familiar liquidator. Lack of expertise could result in sales that do not maximize trade value and result in price impairment.

86. I estimated the discounts from spot prices realistically but conservatively, both with respect to the discount arising from market-depth constraints and the discounts arising from the additional risk factors discussed above. Through discussions with Voyager management and trading experts, my team and I engaged in a multi-step empirical analysis and adopted a largely rules-based approach to estimating the discounts to apply to each of the 106 coin types and in each of the Sale Transaction, Liquidation Transaction, and chapter 7 liquidation scenarios.

87. Our analysis started with an empirical study to understand the market-depth constraints for each coin type. To estimate the discounts for each coin type, we collected historical trade volume data by coin for discreet periods (monthly, weekly, and daily) and compared that liquidity to the notional value of the coins held in Voyager's portfolio. Using a market-based set of rules,<sup>10</sup> I then bucketed coins into distinct categories of liquidity and applied discounts to those categories. I compared my findings against third-party portfolio bid data. Voyager, Moelis, and the Debtors' other advisors also reviewed the resulting analysis for reasonableness; any feedback was taken into consideration and integrated into the analysis where appropriate.

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<sup>10</sup> Key statistics included: daily volume weighted average coin price; daily \$ volume; daily coin volume; monthly average \$ volume; monthly average coin volume; daily volatility in \$ coin prices; monthly average volatility in \$ coin pricing; average volume by coin.

88. In the chapter 7 liquidation high-case, I concluded that the coin portfolio would be liquidated at an approximately 20% discount, with average trading fees of 2%. In the chapter 7 liquidation low-case, I concluded that the coin portfolio would be liquidated at an approximately 26% discount, with the same average trading fees of 2%. As stated, it is my opinion that both these estimates are conversative discounts.

89. Because a chapter 7 liquidation would impose mass-sale conditions that could be avoided by both the Sale Transaction and Liquidation Transaction scenarios, these discounts are estimated to be materially greater than discounts under the Sale Transaction or Liquidation Transaction.

90. *Sale Proceeds.* I estimated the sale proceeds of \$20 million to occur only under the Sale Transaction, and not under the Liquidation Transaction or the chapter 7 liquidation scenario.

91. *Other Assets and Investments.* I assumed that during the liquidation period, the Debtors would continue to consume certain prepaid expenses such as professional fee retainers, licenses, engineering, software, marketing, and other similar contractual obligations. I also assumed that Debtors would sell their equity investments in other private and public companies, and I assumed recovery rates from 0% to 100% across these positions depending on the liquidity of that particular investment. Recoveries on other assets and investments are identical in the high and low cases, approximating \$1.8 million.

92. *3AC Claims.* The Debtors have a claim against 3AC related to the cryptocurrency loan of 15,250 BTC and 350 million USDC made in 2022. For purposes of this analysis, I did not make an assumption regarding recovery of this claim and thus it is reflected as 0% recovery in all scenarios. For the avoidance of doubt, the Debtors and creditors are highly likely to see some 3AC recovery (although the magnitude is unclear at this point). That recovery will likely be either the

same or lower in the hypothetical liquidation scenario (due to the need to take a discount in that scenario reflecting monetizing that asset earlier, paying fees to do so, or both).

93. *Intangible Assets.* In the chapter 7 liquidation scenario, I assumed no recovery value for the Debtors' intellectual property, which comprises goodwill, favorable leasehold interests, trademarks, patents, license agreements, and e-commerce registered domain names.

94. *Litigation Claims.* I excluded litigation claims, which (in a best-case scenario) would be the same under the Sale Transaction, Liquidation Transaction, and chapter 7 liquidation, and thus are not valuable for comparative purposes. In all likelihood litigation claims would produce a lower recovery in a chapter 7 liquidation given the challenges in financing any such litigation and the likelihood that some litigation would not be pursued at all by a chapter 7 trustee.

(ii) **Step 2 - Wind-Down Costs**

95. I next analyzed the estimated costs of the liquidation or wind-down process. I estimated these costs as follows.

96. *Professional Fees.* I estimated professional fees, including costs for financial advisors, attorneys, and other professionals retained by the Debtors (in the Sale Transaction or Liquidation Transaction scenario) or the Trustee (in the chapter 7 liquidation scenario). I estimated these fees based on input from the Debtor's retained professionals and analysis of wind-down professional fees from comparable cases. Based on this analysis and previous experience, I estimated lower professional fees in the liquidation scenario (the same in high and low cases) because the Trustee team would be primarily responsible for execution of the wind down. However, given the novelty and complexity of the Debtor's business and the strong likelihood that the Trustee may have minimal cryptocurrency experience, I view this estimate of professional fees as conservative.

97. *Chapter 7 Trustee Fees.* In the chapter 7 liquidation scenario, I assumed the Trustee would recover a fee equaling 3% of the proceeds of sales excluding recoveries relating to cash and cash equivalents. In the high case, this would result in an estimated \$23.9 million fee; in the low case, \$ 21.8 million.

98. *Wind-Down Operating Costs.* Winding down the business would require that the Debtors continue to employ key personnel and incur platform operating costs. I determined estimated wind-down operating costs based on discussions with management and analysis of historical operating costs. In the chapter 7 liquidation scenario, these costs would be the same in the high and low cases.

99. *Other Costs.* The wind-down process would incur other miscellaneous expenses including insurance, document/data retention services, and third-party processing fees for the liquidation of accounts, all of which are assumed to be the same amounts in the Sale Transaction, Liquidation Transaction, and chapter 7 liquidation (high and low) scenarios. The Sale Transaction and Liquidation Transaction scenarios include additional costs in this category, including cure costs for outstanding contract obligations, and a wind-down reserve for unforeseen additional costs.

100. In sum, for the purposes of this analysis, I estimated total wind down expenses of \$75.6 million for the Sale Transaction and Liquidation Transaction and \$51.7 million for the chapter 7 high and low scenarios (net of estimated U.S. Trustee fees).

(iii) **Step 3 - Net Proceeds**

101. I calculated the Net Proceeds available for distribution by subtracting the Wind-Down Costs from the Estimated Gross Proceeds for each of the scenarios.

(iv) **Step 4 - Distribution of Net Proceeds**

102. Finally, I estimated the recoveries to creditors at each of the Debtors by running the Net Proceeds and estimated claims as of the Petition Date through a waterfall recovery model, which pays claims based on priority until fulfilled, and then “waterfalls” to the next lower priority claim, until all proceeds are depleted. The distributions to creditors in my analysis reflects bankruptcy code section 1129’s “absolute priority rule” that no junior creditor at a given entity would receive any distribution until all senior creditors are paid in full at that entity, and no equity holder would receive any distribution until all creditors at such entity are paid in full.

103. More specifically, the Net Proceeds would be distributed as follows:

- (a) *Secured Tax Claims.* Based on the December 6, 2022 claims register, there are no identified Secured Tax Claims. My analysis thus assumes zero payment. That said, if any are later revealed, a 100% recovery is expected.
- (b) *Administrative, Priority Tax Claims and other Priority Claims.*
  - (i) *Administrative Claims.* Administrative Claims include unpaid-post-petition accounts payable, accrued operating expenses, unpaid post-petition taxes, and chapter 11 professional fees incurred through the Conversion Date. On the Conversion Date, these are anticipated to be approximately \$39.1 million and are the same in the Sale Transaction, Liquidation Transaction, and chapter 7 liquidation scenarios.
  - (ii) *Priority Tax Claims.* Federal and state tax claims are estimated to be \$3.0 million in all three scenarios.
  - (iii) *Other Priority Claims.* Other Priority Claims, namely potential claims by government agencies, are estimated to be \$1.0 million in all three scenarios.



(c) *Unsecured Claims: Account Holder Claims and General Unsecured Claims.*

(i) Account Holder Claims are estimated to be approximately \$1.764 billion as of the Conversion Date in all three scenarios based on the number of customer coins and coin prices as of the Petition Date.

(ii) Based on the December 6, 2022 claims register, General Unsecured Claims are estimated to total approximately \$25.3 million on the Conversion Date, in all three scenarios.

(iii) The remainder of the Debtors' funds would be distributed pro rata across the Account Holder Claims and General Unsecured Claims, as illustrated below.<sup>11</sup>

	Voyager Digital Consolidated								
	Claims	Binance		Toggle		High Case		Low Case	
	All Scenarios	Plan	Recovery	Plan	Recovery	Liquidation	Recovery	Liquidation	Recovery
	4/18/2023	4/18/2023		6/18/2023		4/18/2023		4/18/2023	
TOTAL ESTIMATED PROCEEDS (NET)		935.7		841.6		726.2		661.4	
Administrative Claims	39.1	39.1	100%	39.1	100%	39.1	100%	39.1	100%
Priority Tax Claims	3.0	3.0	100%	3.0	100%	1.1	36%	1.0	35%
Secured Tax Claims	-	-	0%	-	0%	-	0%	-	0%
Other Priority Claims	1.0	1.0	100%	1.0	100%	1.0	99%	1.0	99%
Account Holder Claims	1,763.8	883.0	50%	789.5	45%	678.1	38%	613.8	35%
OpCo General Unsecured Claims	14.0	7.0	50%	6.3	45%	5.4	38%	4.9	35%
HoldCo General Unsecured Claims	8.3	0.9	11%	0.9	11%	-	0%	-	0%
TopCo General Unsecured Claims	3.0	1.7	58%	1.7	58%	1.6	53%	1.6	52%
Alameda Loan Facility Claims	75.1	-	0%	-	0%	-	0%	-	0%
Section 510(b) Claims	-	-	0%	-	0%	-	0%	-	0%
Intercompany Claims	-	-	0%	-	0%	-	0%	-	0%
Intercompany Interests	-	-	0%	-	0%	-	0%	-	0%
Existing Equity Interests	-	-	0%	-	0%	-	0%	-	0%
TOTAL RECOVERIES	1,907.3	935.7	49%	841.6	44%	726.2	38%	661.4	35%

<sup>11</sup> Recoveries in Table reflect updated estimates for wind down costs in all scenarios, including costs for the shuttering of foreign entities, additional severance and incremental operating costs, for a total of \$8.2M in incremental costs, as reflected in the *Second Amended Plan Supplement* [Docket No. 1006], filed after my Liquidation Analysis provided as Exhibit B to the *Second Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and its Debtor Affiliates* [Docket No. 863]. Any litigation fund reserves are assumed to recover at minimum the funds utilized to pursue the recoveries.

(d) *Alameda Loan Facility Claims.* Alameda Loan Facility Claims are estimated to be approximately \$75.1 million as of the Conversion Date. The analysis assumes that such claims would be equitably subordinated. Because there would be no remaining funds after distributing funds for Account Holder Claims and General Unsecured Claims, the Alameda Loan Facility Claims Holder would recover nothing.

104. Based on the above steps, and as illustrated in the chart above, under both the high and low case, a chapter 7 liquidation results in lower recoveries than either the Sale Transaction or Liquidation Transaction. A chapter 7 liquidation would result in inferior recoveries for holders of Other Priority Claims, Account Holder Claims, and General Unsecured Claims. Taking all creditor claims together, the Sale Transaction and Liquidation Transaction scenarios provide higher blended recovery rates than a chapter 7 liquidation.

105. Accordingly, it is my opinion that confirmation of the Sale Transaction or Liquidation Transaction will provide creditors with a recovery that is greater than or equal to what they would otherwise receive in connection with a liquidation of the Debtors under chapter 7 of the bankruptcy code. Moreover, I believe creditors will receive more value under confirmation of the Plan, including either the Sale Transaction or Liquidation Transaction, as compared to under a chapter 7 liquidation for additional reasons. First, I understand that conversion to a chapter 7 liquidation would require entry of a new bar date. Accordingly, the amount of Claims ultimately filed and allowed against the Debtors could materially increase, thereby further reducing creditor recoveries versus those available under the Sale Transaction or Liquidation Transaction. Second, and relatedly, I understand that conversion to a chapter 7 liquidation will result in significantly

delayed recoveries to creditors, versus under confirmation of the Plan, where the Debtors stand ready to consummate a value-maximizing transaction and return cryptocurrency in the near term.

## **V. Plan Feasibility**

106. I understand that section 1129(a)(11) of the bankruptcy code requires a court to determine that a chapter 11 plan is feasible and that confirmation of such plan is not likely to be followed by the liquidation or further financial reorganization of the Debtors (or any successors thereto) unless such liquidation or reorganization is proposed in the plan.

107. For the reasons outlined below, it is my professional opinion that the Plan is feasible and is not likely to be followed by liquidation or further financial reorganization as contemplated by the Plan.

108. The Sale Transaction is the culmination of a multi-month marketing process to identify the best possible path forward for the Debtors' creditors. I was intimately involved, along with the Debtors' other advisors and the management team and working closely with the Committee, in the Debtors' marketing process and the negotiations that, ultimately, led to execution of the Asset Purchase Agreement and development of the Plan. The Plan maximizes the value of the Debtors' estates, and the proceeds obtained from the Sale Transaction will allow the Debtors to satisfy all Priority and Administrative Claims under the Plan in full. Further, as the Sale Transaction contemplates a sale of substantially all assets of the Debtors to Binance.US and the subsequent wind-down of the Debtors' estates, I do not believe that consummation of the Sale Transaction will be followed by a liquidation or further reorganization of the Debtors.

109. As demonstrated in my Liquidation Analysis, the Sale Transaction maximizes the value of the Debtors' estate and will allow the Debtors to satisfy their obligations under the Plan, including satisfying all Priority and Administrative Claims under the Plan in full, and maximizing

recovery to remaining creditors. In addition, the Plan provides customers the most tax efficient route forward as Binance.US supports (or will support) 100% of the cryptocurrency coins on the Debtors' platform.

110. Moreover, if the Sale Transaction cannot be consummated or if the Debtors conclude in their good faith judgment that the Sale Transaction will not produce a value-maximizing outcome for creditors, the Debtors will pursue the Liquidation Transaction and consummate a self-liquidation. I believe that provided the Plan is confirmed without material changes and the strategy set forth in the Plan is pursued in full by the Wind Down Trustee, the Liquidation Transaction is feasible, and that the Debtors will be able to distribute their cryptocurrency assets to customers (i) on a faster timeline than a chapter 7 liquidation and (ii) on a much more cost-effective basis, as the Debtors will not incur the additional administrative costs associated with a chapter 7 liquidation and subsequent distribution or the price leakage associated with a mass-sale event that I describe in my Liquidation Analysis. As I demonstrate in the Liquidation Analysis, in the event that the Debtors' pursue the Liquidation Transaction, I believe that the Debtors will be able to pay all Administrative and Priority Claims in full and satisfy all other obligations under the bankruptcy code.

111. To do this, however, it is necessary that the Debtors maintain the staffing levels and internal expertise necessary to execute both the Sale Transaction and the Liquidation Transaction. The Binance.US Asset Purchase Agreement imposes a number of obligations on the Debtors that will require the services of employees in operations, customer service, engineering, security, finance, and data to fulfill these obligations. Specifically, after the Binance.US Transaction closes, the Debtors retain obligations related to: (a) making regulatory filings and cooperating with regulators; (b) maintaining and transferring data securely; (c) developing and implementing a user

migration plan involving modifications to Voyager's web interface and mobile app, and an electronic process facilitating the acceptance of certain terms and conditions on the Binance.US Platform; (d) being available for a period following close of the Sale Transaction to provide assistance reasonably requested by the Purchaser in connection with the opening of user accounts and transfer of information and Cryptocurrency; (e) rebalancing the Cryptocurrency on the Debtors' platform to prepare for closing of the Sale Transaction on a timely basis; (f) "unstaking" certain coins and ensuring they are freely transferable and not subject to restrictions, and (g) making available technical IT staff to assist Binance.US during the transaction.<sup>12</sup>

112. The Debtors also must have certain expertise present (as a practical matter) only within certain existing employees in the event the Debtors need to pivot to the Liquidation Transaction. The Liquidation Transaction would require the Debtors to, among other tasks, rebalance the Cryptocurrency in their possession, complete anti-money laundering and know-your-customer compliances and reopen the Debtors' platform for a period of time to permit customers to withdraw Cryptocurrency, while making sure that these transactions can all occur safely, securely and efficiently, with minimum value leakage and risk given the highly sensitive nature of these transactions. This exercise will be challenging and, without certain key employees who are currently working for the Debtors, likely cannot be done without assuming materially greater risk than we would recommend the Debtors taking.

113. It is for that reason that a key component of the Debtors' proposed Plan, which was created with input from the Committee, is the Employee Transition Plan, which is described in the Plan Supplement and is accounted for in the Wind-Down Budget. The personnel responsible for executing the proposed Plan have no incentives to remain associated with the company and

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<sup>12</sup> Asset Purchase Agreement §§ 6.4, 6.6, 6.10, 6.11, 6.15, 6.16.

complete this work following confirmation given that the Debtors will not exist at the end of the process and they will need to find other jobs. The Employee Transition Plan was created (and approved by the Committee) to ensure the expertise needed to execute the Sale Transaction and the Liquidation Transaction stays with the enterprise in order to complete the process of returning cryptocurrency to customers in the most efficient way possible. Without the employees, however, the Debtors would be unable to honor their obligations in the Sale Transaction and would not be able to do the work needed to consummate the Liquidation Transaction and the likely only option would be conversion to a full liquidation under chapter 7 of the bankruptcy code, which as discussed above in the Liquidation Analysis, would materially reduce and delay customer recoveries. In other words, my opinions with respect to feasibility are informed in part by the fact that the Debtors have taken steps to ensure that the experience and expertise necessary to execute the Sale Transaction and/or the Liquidation Transaction will remain in place until the process runs its course, and the Committee and its advisors have recognized the necessity of the Employee Transition Plan for that to happen.

## **VI. The Releases and Exculpations In the Plan Are Reasonable and Appropriate.**

114. It is my understanding that the Plan contemplates releases of the Debtors' potential claims, subject to the terms of the D&O Settlement, of their directors, officers, and employees who have worked during the course of these chapter 11 cases. For the avoidance of doubt, these debtor releases are of potential *Debtor* claims, and do not have any impact on any direct claims that any customer or other third party may have (if any) against any of the directors, officers, and employees.

115. Given my close involvement with these individuals, I have a firsthand understanding of their involvement and "sweat equity" contributions made to the Debtors and their



estates during the entirety of these chapter 11 cases. I also know full well the contributions that we will need those individuals to continue to make as we Wind-Down the estate and return funds to customers. It would be massively value-destructive and not helpful to the process, and would ultimately lead to less value to creditors, if the Debtors and/or the Wind-Down Estate were to spend capital pursuing such claims that are covered by the Debtor releases. And it is critical to the delicate process envisioned by the Plan for those Debtor releases to go into effect. Again, this has no impact whatsoever on any direct claims creditors and parties-in-interest may have against Released Parties, but as far as the Debtors' releases go, I believe such releases are appropriate.

## **VII. Appointment of a Trustee Is Not Warranted In These Chapter 11 Cases.**

116. I understand that certain creditors have sought to appoint a trustee in these chapter 11 cases. As an industry professional for over 25 years, I can state with certainty that appointment of a trustee would be an unmitigated disaster. There is no benefit at all to appointing a trustee and unwinding the significant work and progress made to date by the Debtors in these chapter 11 cases. As described herein, my team and I have worked intimately with the Debtors and their management team, as well as the Debtors' advisors and the advisors to the UCC, and all appear aware of the significant progress and achievements obtained during these chapter 11 cases to date. No trustee could realistically displace management and execute on any of the transactions contemplated by the Plan (or any comparable transaction), and the only realistic outcome from a trustee's appointment would be a chapter 7 liquidation in which creditor recoveries would be materially reduced and materially delayed. It is my professional opinion that appointing a trustee at this time would be wholly inappropriate given that the Debtors have completed solicitation and are already before the Court seeking confirmation of the Plan to move forward with the transactions contemplated thereunder that provide distributions to Holders of Claims.

### **VIII. The Plan Provides Recovery Options for Creditors in Unsupported Jurisdictions.**

117. I am aware that Binance.US does not yet have the requisite money transmitter licensing approvals, authorizations, or exemptions (as applicable) in Hawaii, New York, Texas, and Vermont (the “Unsupported Jurisdictions”) and understand that, as a result, it will be unable to make cash or cryptocurrency distributions to creditors in those states on the Effective Date of the Plan unless some or all of the Unsupported Jurisdictions choose to follow the lead of the other 46 states and permit Binance.US to make such distributions. Due to the legal, operational, and technical limitations, set forth below, if the Binance.US Transaction is approved, the Debtors will not be able to distribute cryptocurrency themselves to creditors in Unsupported Jurisdictions.

118. *First*, the Voyager platform that would be required to facilitate in-kind distributions to creditors is being sold to Binance.US in connection with the transaction. This means that any in-kind distributions to creditors in Unsupported Jurisdictions would need to be done manually on a transaction-by-transaction basis for approximately 120,000 creditors. My understanding is that not only would manual distributions outside the Voyager platform be extremely complex, but the Debtors do not have the necessary infrastructure or personnel to accomplish this in a safe and secure manner.

119. *Second*, my understanding is that there are risks associated with the Debtors’ distribution of cryptocurrency to individual creditor wallets as opposed to effectuating such distributions through the Binance.US platform. The Debtors must comply with AML/KYC laws when sending cryptocurrency to individual wallets. Historically, the Debtors used Chainalysis for automated verification of certain user generated cryptocurrency transfer requests. However, Chainalysis does not support all of the tokens listed on the Voyager platform. I have been advised that AML/KYC compliance is straightforward when transferring cryptocurrency to

Binance.US wallets, but it poses substantial risk to the Debtors as it relates to the manual transfer of cryptocurrency to individual wallets for approximately 120,000 creditors. Binance.US has represented to the Debtors that it has existing infrastructure in place that would allow it to perform AML/KYC compliance checks in connection with transferring all cryptocurrency to customer accounts on its platform. Unlike ACH transfers that can be reversed, cryptocurrency sent to the wrong wallet cannot, which is why parties will often send a small “test” transaction to a wallet address prior to initiating a large transfer.

120. *Third*, there are technical limitations that would prevent the Debtors from making in-kind distributions of certain types of cryptocurrency on the Debtors’ platform. There are 35 cryptocurrency tokens (approximately 17% of the Debtors’ cryptocurrency portfolio based on equivalent USD value) on the Debtors’ platform that cannot be transferred directly to individual wallets due to technical limitations associated with the Debtors’ platform. Users can, however, withdraw these tokens using certain third-party exchanges (such as Binance.US). Historically, users of the Debtors’ platform have exited from their positions in such tokens by selling such tokens for cash, transactions that previously required close interaction with market makers to effectuate. The only way for the Debtors to distribute the value associated with these non-transferable tokens to creditors in Unsupported Jurisdictions other than through the Binance.US transaction is to liquidate the tokens and distribute the resulting cash.

121. *Finally*, the Debtors would need to significantly increase the engineering, regulatory, compliance, and other operational staff contemplated under the Plan to facilitate manual transfers to individual customer wallets that they otherwise would not have to do if transfers to customers were made through the Binance.US platform or the Voyager platform (which is being sold to Binance). The Debtors would also need to revive certain dormant contracts

with third-party vendors to process distributions to creditors in this manner. This would result in increased administrative costs as compared to the costs of liquidating the cryptocurrency associated with creditors in Unsupported Jurisdictions and distributing the equivalent value in cash.

122. In light of these challenges, for creditors in the Unsupported Jurisdictions, the Debtors will retain custody of the cryptocurrency that would be distributed to those creditors until Binance.US obtains the necessary approvals. In the event that Binance.US is unable to obtain those necessary approvals to make distributions to creditors in Unsupported Jurisdictions within six months following the closing (*i.e.*, an incremental three months following distributions to creditors in other jurisdictions), it is my understanding that the Plan calls for the Debtors to convert the cryptocurrency attributable to such creditors to cash and distribute the equivalent realized cash value associated with such liquidations to such creditors. It is my understanding that Binance.US shall have the opportunity to execute in such conversion transactions subject to the agreed-upon protocol between the Debtors and Binance.US set forth in the Binance.US Purchase Agreement. If, however, Binance.US is able to obtain the necessary approvals within that six-month period, Binance.US would make in kind distributions to the creditors in newly approved jurisdictions.

123. It is also my understanding that the Unsupported Jurisdictions can provide temporary solutions to allow Binance.US to make distributions in kind to creditors. The Debtors do not believe it would be appropriate to jeopardize the Binance.US Transaction—which is in the best interests of their estates as a whole—or take on significant additional risks and costs to endeavor to give in-kind distributions to creditors in Unsupported Jurisdictions if the state banking departments choose not to provide such temporary solutions.

**IX. The Plan Modifications Are Reasonable, Do Not Require Resolicitation, and Should Be Approved.**

124. I understand that section 1127(a) of the bankruptcy code provides that a plan proponent may modify its plan at any time before confirmation as long as such modified plan meets the requirements of sections 1122 and 1123 of the bankruptcy code. I have also been advised that under section 1125 of the bankruptcy code, a proposed modification to a previously accepted plan will be deemed accepted where the proposed modification is not material or does not adversely affect the way creditors and stakeholders are treated, unless such affected creditors consent to the treatment.

**X. Conclusion**

125. In summary, it is my opinion that the Plan satisfies the standards for confirmation applicable under the bankruptcy code. Among other things, the Sale Transaction or the Liquidation Transaction will provide all holders of claims and interests with a recovery (if any) that is not less than what such holders would receive pursuant to a hypothetical liquidation of the Debtors under chapter 7 of the bankruptcy code. And given the optionality created by the Plan, it is my opinion that the Plan (provided it is confirmed without material changes and is executed as anticipated) is feasible and will not result in additional liquidation or financial restructuring beyond that contemplated in the Plan. Finally, as described above, appointment of a trustee in these chapter 11 cases is not warranted.

*[Remainder of page intentionally left blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: February 28, 2023  
Boston, Massachusetts

/s/ Mark A. Renzi  
Mark A. Renzi  
Managing Director  
Berkley Research Group, LLC



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER (I) APPROVING THE SECOND AMENDED  
DISCLOSURE STATEMENT AND (II) CONFIRMING THE THIRD  
AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND ITS  
DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Voyager Digital Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”)<sup>2</sup> having:

- a. commenced, on July 5, 2022 (the “Petition Date”), these chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief in the United States Bankruptcy Court for the Southern District of New York (the “Court”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);
- b. continued to operate their business and manage their property during these Chapter 11 Cases as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- c. filed,<sup>3</sup> on July 6, 2022, the *Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 17];
- d. filed, on July 21, 2022, the *Debtors’ Motion Seeking Entry of an Order (I) Approving the Bidding Procedures and Related Dates and Deadlines, (II) Scheduling Hearings and Objection Deadlines with Respect to the Debtors’*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan, the Disclosure Statement, the Asset Purchase Agreement, or the Bankruptcy Code (each as defined herein), as applicable. The rules of interpretation set forth in Article I.B. of the Plan apply.

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in these Chapter 11 Cases, as applicable.

*Sale, Disclosure Statement, and Plan Confirmation, and (III) Granting Related Relief* [Docket No. 126];

- e. obtained, on August 5, 2022, the entry of the *Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Debtors' Sale, Disclosure Statement, and Plan Confirmation and (V) Granting Related Relief* [Docket No. 248] (the "Bidding Procedures Order") approving the *Bidding Procedures for the Submission, Receipt, and Analysis of Bids in Connection with the Sale of the Debtors*, attached to the Bidding Procedures Order as Exhibit 1 (the "Bidding Procedures");
- f. filed, on August 12, 2022, the *First Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 287], the *Disclosure Statement Relating to the First Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 288], and the *Debtors' Motion for Entry of an Order Approving (I) the Adequacy of the Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [Docket No. 289];
- g. commenced, on September 13, 2022, the Auction for the sale of substantially all of the Debtors' assets in accordance with the Bidding Procedures;
- h. closed, on September 26, 2022, the Auction and selected West Realm Shires Inc. ("FTX US") as the Winning Bidder (as defined in the Bidding Procedures);
- i. obtained, on October 20, 2022, entry of the *Order (I) Authorizing Entry of the Asset Purchase Agreement and (II) Granting Related Relief* [Docket No. 581], which authorized entry into that certain asset purchase agreement by and between Voyager Digital, LLC and West Realm Shires Inc. (together with its affiliates, "FTX US," and the asset purchase agreement, the "FTX US Asset Purchase Agreement");
- j. filed, on October 24, 2022, the *Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 590] and the *First Amended Disclosure Statement Relating to the Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 591];
- k. filed, on December 9, 2022, the *Stipulation and Agreed Order* [Docket No. 717] by and between FTX US and the Debtors (the "FTX US APA Stipulation"), terminating the FTX US Asset Purchase Agreement;
- l. filed, on December 21, 2022, the *Debtors' Motion for Entry of an Order (I) Authorizing Entry into the Binance US Purchase Agreement and (II) Granting Related Relief* [Docket No. 775] and that certain asset purchase agreement by and between Voyager Digital, LLC and BAM Trading Services Inc. d/b/a Binance.US

(together with its affiliates, “Binance.US,” and the asset purchase agreement, the “Asset Purchase Agreement”)

- m. filed, on December 22, 2022, the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 777] (as amended, modified, or supplemented from time to time, the “Plan”), the *Second Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 778] (as amended, modified, or supplemented from time to time, the “Disclosure Statement”), and the *Debtors’ Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Adequacy of the Debtors’ Disclosure Statement, (III) Approving (A) Procedures for Solicitation, (B) Forms of Ballots and Notices, (C) Procedures for Tabulation of Votes, and (D) Procedures for Objections, and (IV) Granting Related Relief* [Docket No. 779];
- n. filed, on January 9, 2023, the first amendment to the Asset Purchase Agreement [Docket No. 835];
- o. obtained, on January 10, 2023, approval of the FTX US APA Stipulation [Docket No. 849];
- p. filed, on January 10, 2023, the revised Plan [Docket No. 852];
- q. filed, on January 13, 2023, the revised Disclosure Statement [Docket No. 863];
- r. obtained, on January 13, 2023, entry of the *Order (I) Authorizing Entry into the Asset Purchase Agreement and (II) Granting Related Relief* [Docket No. 775], which granted entry into the asset purchase agreement with Binance.US (the “Asset Purchase Agreement Order”);
- s. obtained, on January 13, 2023, entry of the *Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Adequacy of the Debtors’ Disclosure Statement, (III) Approving (A) Procedures for Solicitation, (B) Forms of Ballots and Notices, (C) Procedures for Tabulation of Votes and (D) Procedures for Objections* [Docket No. 861] (the “Conditional Disclosure Statement Order”) conditionally approving the Disclosure Statement, solicitation procedures (the “Solicitation Procedures”), and solicitation materials, including notices, forms, and ballots (collectively, the “Solicitation Packages”);
- t. caused the Solicitation Packages and notice of the Combined Hearing and the deadline for objecting to the Disclosure Statement and to confirmation of the Plan (“Confirmation”) to be distributed on or before January 25, 2023 (the “Solicitation Date”), in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), the Disclosure Statement Order, and the

Solicitation Procedures, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 926] and the *Supplemental Affidavit of Service* [Docket Nos. 927 and 1016] (collectively, the “Affidavit of Solicitation”);

- u. filed, on February 1, 2023, the *Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* [Docket No. 943] (the “Initial Plan Supplement”) and caused notice of the filing of the Initial Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 951];
- v. published, on February 3, 2023, notice of the Combined Hearing (the “Combined Hearing Notice”) in the *The New York Times* (National Edition) and *Financial Times* (International Edition), as evidenced by the *Affidavits of Publication* [Docket Nos. 954 and 955] (the “Publication Affidavits” and, together with the Affidavit of Solicitation, the “Affidavits”);
- w. filed, on February 8, 2023, the *First Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* [Docket No. 986] (the “First Amended Plan Supplement”) and caused notice of the filing of the First Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 992];
- x. filed, on February 15, 2023, the *Second Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* (the “Second Amended Plan Supplement”) [Docket No. 1006] and caused notice of the filing of the Second Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 1037];
- y. filed, on February 21, 2023, the *Third Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* (the “Third Amended Plan Supplement”) [Docket No. 1035] and caused notice of the filing of the Third Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 1058];
- z. filed, on February 28, 2023, the *Debtors’ Motion for Entry of an Order Approving Joint Stipulation and Agreed Order Between the Voyager Debtors, the FTX Debtors, and Their Respective Official Committees of Unsecured Creditors* [Docket No. 1106] (the “FTX Settlement”);
- aa. filed, on February 28, 2023, the *Declaration of Leticia Sanchez Regarding the Solicitation and Tabulation of Votes on the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1108] (the “Voting Report”);

- bb. filed, on February 28, 2023, the *Debtors' Memorandum of Law in Support of (I) Final Approval of the Second Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code and (II) an Order Confirming the Debtors' Third Amended Joint Chapter 11 Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* [Docket No. 1110] (the "Confirmation Brief");
- cc. filed, on February 28, 2023, the *Declaration of Timothy R. Pohl, Independent Director and Member of the Special Committee of the Board of Directors of Voyager Digital, LLC, in Support of Confirmation of the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1111] (the "Pohl Declaration");
- dd. filed, on February 28, 2023, the *Declaration of Brian Tichenor in Support of Confirmation of the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1113] (the "Tichenor Declaration");
- ee. filed, on February 28, 2023, the *Fourth Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* (the "Fourth Amended Plan Supplement") (together with the Initial Plan Supplement, First Amended Plan Supplement, Second Amended Plan Supplement, and Third Amended Plan Supplement, and as may be modified, amended, or supplemented from time to time, the "Plan Supplement") [Docket No. 1115] and will cause notice of the filing of the Fourth Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order; and
- ff. filed, on February 28, 2023, the revised version of the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1117];
- gg. filed, on February 28, 2023, the *Declaration of Mark A. Renzi in Support of Confirmation of the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1119] (the "Renzi Declaration," and, together with the Voting Report, the Pohl Declaration, the Tichenor Declaration, and the Renzi Declaration, the "Declarations");
- hh. filed, on February 28, 2023, this *Notice of Filing of Proposed Findings of Fact, Conclusions of Law, and Order (I) Approving the Second Amended Disclosure Statement and (II) Confirming the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (this "Confirmation Order").



The Court having:

- a. entered the Bidding Procedures Order on August 5, 2022 [Docket No. 248];
- b. entered the Asset Purchase Agreement Order on January 13, 2023 [Docket No. 775];
- c. entered the Conditional Disclosure Statement Order on January 13, 2023 [Docket No. 861];
- d. set February 22, 2023, at 4:00 p.m. (prevailing Eastern Time) as the deadline to object to the Disclosure Statement and the Plan and to object to proposed cure costs and any assumption of an Executory Contract or Unexpired Lease pursuant to the *Schedule of Assumed Executory Contracts and Unexpired Leases* (the “Assumed Contract Schedule”), filed as Exhibit A to the Plan Supplement (the “Plan Objection Deadline”);
- e. set February 22, 2023, at 4:00 p.m. (prevailing Eastern Time) as the deadline for voting on the Plan (the “Voting Deadline”);
- f. set March 2, 2023 at 10:00 a.m. (prevailing Eastern Time) as the date and time for the commencement of the Combined Hearing, pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the Bankruptcy Code;
- g. reviewed the Plan, the Disclosure Statement, the Plan Supplement, the Confirmation Brief, the Declarations, the Voting Report, the Combined Hearing Notice, the Affidavits, and all filed pleadings, exhibits, statements, and comments regarding Confirmation, including all objections, statements, and reservations of rights filed by parties in interest on the docket of the Chapter 11 Cases;
- h. held the Combined Hearing on March 2, 2023 at 10:00 a.m., prevailing Eastern Time;
- i. heard the statements and arguments made by counsel with respect to final approval of the Disclosure Statement and Confirmation of the Plan;
- j. considered all oral representations, live testimony, written direct testimony, designated deposition testimony, exhibits, documents, filings, and other evidence presented at the Combined Hearing;
- k. overruled any and all objections to the Disclosure Statement and the Plan and to Confirmation and all statements and reservations of rights not consensually resolved, agreed to, or withdrawn, unless otherwise indicated; and
- l. taken judicial notice of all papers and pleadings and other documents filed, all orders entered, and all evidence and arguments presented in these Chapter 11 Cases.



NOW, THEREFORE, the Court having found that the notice of the Combined Hearing and the opportunity for any party in interest to object to approval of the Disclosure Statement and confirmation of the Plan were adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated therein, and that the legal and factual bases set forth in the documents filed in support of approval of the Disclosure Statement and confirmation of the Plan and other evidence presented at the Combined Hearing and the record of the Chapter 11 Cases establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Court makes and issues the following findings of fact and conclusions of law, and orders:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

IT IS DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:

**A. Findings and Conclusions.**

1. The findings and conclusions set forth herein and in the record of the Combined Hearing constitute the Court's findings of fact and conclusions of law under rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.

**B. Jurisdiction, Venue, and Core Proceeding.**

2. The Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, entered February 1, 2012. The Court has exclusive jurisdiction to determine whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code and should be approved and confirmed,

respectively. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

**C. Eligibility for Relief.**

3. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

**D. Commencement and Joint Administration of the Chapter 11 Cases.**

4. On the Petition Date, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. In accordance with the *Order (I) Directing Joint Administration of the Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 18], these Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. Since the Petition Date, the Debtors have operated their business and managed their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

**E. Appointment of the Committee.**

5. On July 19, 2022, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 106].

**F. Judicial Notice, Objections Overruled.**

6. The Court takes judicial notice of (and deems admitted into evidence for purposes of final approval of the Disclosure Statement and Confirmation of the Plan) the docket of the Chapter 11 Cases maintained by the clerk of the Court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of these Chapter 11 Cases. All objections, statements, informal objections, and

reservations of rights not consensually resolved, agreed to, or withdrawn, if any, related to the Disclosure Statement, the Plan, or Confirmation are overruled on the merits unless otherwise indicated in this Confirmation Order.

**G. Conditional Disclosure Statement Order.**

7. On January 13, 2023, the Court entered the Conditional Disclosure Statement Order [Docket No. 861], which, among other things, set (i) February 22, 2023, at 4:00 p.m. (prevailing Eastern Time) as (a) the Plan Objection Deadline and (b) the Voting Deadline and (ii) March 2, 2023, at 10:00 a.m. (prevailing Eastern Time) as the date and time for commencement of the Combined Hearing.

**H. Adequacy of the Disclosure Statement.**

8. The Disclosure Statement contains (a) sufficient information of a kind necessary to satisfy the disclosure requirements of all applicable nonbankruptcy laws, rules, and regulations, including the Securities Act, and (b) “adequate information” (as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein. The filing of the Disclosure Statement with the clerk of the Court satisfied Bankruptcy Rule 3016(b), and the Disclosure Statement, the Plan, and the Solicitation Packages provided all parties-in-interest with sufficient notice regarding the settlement, release, exculpation, and injunction provisions contained in the Plan in compliance with Bankruptcy Rule 3016(c).

**I. Burden of Proof—Confirmation of the Plan.**

9. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation.

**J. Notice.**

10. The Debtors provided due, adequate, and sufficient notice of the Disclosure Statement, the Conditional Disclosure Statement Order, the Plan, the Plan Supplement, the Solicitation Packages, the Combined Hearing Notice, the proposed assumption and rejection of Executory Contracts and Unexpired Leases and the proposed cure amounts, and all the other materials distributed by the Debtors in connection with Confirmation of the Plan, together with the Plan Objection Deadline, the Voting Deadline, and the Combined Hearing, and any applicable bar dates and hearings described in the Conditional Disclosure Statement Order, in compliance with the Bankruptcy Rules, Local Rules, and the procedures set forth in the Disclosure Statement Order. No other or further notice is or shall be required.

**K. Solicitation.**

11. Prior to the Combined Hearing, the Debtors filed the Voting Report. The Voting Report was admitted into evidence during the Combined Hearing. As described in the Voting Report, the solicitation of votes on the Plan complied with the Solicitation Procedures, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable rules, laws, and regulations.

12. As described in the Voting Report, following the Petition Date, the Solicitation Packages, the Plan Supplement, and the Combined Hearing Notice were transmitted and served, including to all Holders of Claims in Class 3 (Account Holder Claims), Class 4A (OpCo General Unsecured Claims), Class 4B (HoldCo General Unsecured Claims), and Class 4C (TopCo General Unsecured Claims) (collectively, the “Voting Classes”) that held a Claim as of January 10, 2023 (the date specified in such documents for the purpose of solicitation) (the “Voting Record Date”), in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the

Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Local Rules, the Disclosure Statement Order, and any applicable nonbankruptcy law. Transmission and service of the Solicitation Packages and the Combined Hearing Notice were timely, adequate, and sufficient. The establishment and notice of the Voting Record Date were reasonable and sufficient. No other or further notice is required.

13. The period during which Holders in the Voting Classes were required to submit acceptances or rejections to the Plan was reasonable and sufficient for such Holders to make an informed decision to accept or reject the Plan.

14. As set forth in the Plan, Holders of Claims in the Voting Classes were eligible to vote on the Plan in accordance with the Solicitation Procedures. Holders of Claims in Class 1 (Secured Tax Claims) and Class 2 (Other Priority Claims) (collectively, the “Presumed Accepting Classes”) are Unimpaired and conclusively presumed to accept the Plan and, therefore, did not vote to accept or reject the Plan. Holders of Claims in Class 7 (Intercompany Claims) and Interests in Class 8 (Intercompany Interests) either are Unimpaired and conclusively presumed to have accepted the Plan (to the extent reinstated) or Impaired and conclusively deemed to have rejected the Plan, and, therefore, are not entitled to vote to accept or reject the Plan. Holders of Claims in Class 5 (Alameda Loan Facility Claims) and Class 6 (Section 510(b) Claims) and Interests in Class 9 (Existing Equity Claims) (collectively, the “Deemed Rejecting Classes”) are Impaired under the Plan and are deemed to have rejected the Plan. Nevertheless, the Debtors served Holders in such Deemed Rejecting Classes with the Plan, the Disclosure Statement, the Non-Voting Status Notice, and the Combined Hearing Notice.

**L. Voting.**

15. As evidenced by the Voting Report, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in compliance with the Bankruptcy Code, the

Bankruptcy Rules, the Local Rules, the Conditional Disclosure Statement Order, and any applicable nonbankruptcy law, rule, or regulation.

16. As evidenced by the Voting Report, Class 3 (Account Holder Claims), Class 4B (HoldCo General Unsecured Claims), and Class 4C (TopCo General Unsecured Claims) voted to accept the Plan in accordance with section 1126 of the Bankruptcy Code.

17. Based on the foregoing, and as evidenced by the Voting Report, at least one Impaired Class of Claims (excluding the acceptance by any insiders of any of the Debtors) has voted to accept the Plan in accordance with the requirements of sections 1124 and 1126 of the Bankruptcy Code.

**M. Plan Supplement.**

18. The Plan Supplement complies with the Bankruptcy Code and the terms of the Plan, and the filing and notice of the documents included in the Plan Supplement are adequate and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Conditional Disclosure Statement Order, and the facts and circumstances of the Chapter 11 Cases. No other or further notice is or will be required with respect to the Plan Supplement. All documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan, compliance with the Bankruptcy Code and the Bankruptcy Rules, and, solely to the extent set forth under the Asset Purchase Agreement, consent of the Purchaser, and in a form reasonably acceptable to the Committee, the Debtors reserve the right to alter, amend, update, or modify the Plan Supplement before the Effective Date.

**N. Modifications to the Plan.**

19. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan since the commencement of Solicitation described or set forth herein constitute technical changes or changes with respect to particular Claims or Interests made pursuant to the agreement of the



Holders of such Claims or Interests and do not materially and adversely affect or change the treatment of any other Claims or Interests. Pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that the Holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

20. This Confirmation Order contains modifications to the Plan that were made to address objections and informal comments received from various parties in interest. Modifications to the Plan since the entry of the Conditional Disclosure Statement Order, if any, are consistent with the provisions of the Bankruptcy Code. The disclosure of any Plan modifications prior to or on the record at the Combined Hearing constitutes due and sufficient notice of any and all Plan modifications. The Plan as modified shall constitute the Plan submitted for Confirmation.

**O. Bankruptcy Rule 3016.**

21. The Plan and all modifications thereto are dated and identify the Entities submitting them, thereby satisfying Bankruptcy Rule 3016(a). The Debtors appropriately filed the Disclosure Statement and the Plan with the Court, thereby satisfying Bankruptcy Rule 3016(b). The injunction, release, and exculpation provisions in the Disclosure Statement and the Plan describe, in bold font and with specific and conspicuous language, all acts to be enjoined and identify the entities that will be subject to the injunction, thereby satisfying Bankruptcy Rule 3016(c).

**P. Compliance with Bankruptcy Code Requirements—Section 1129(a)(1).**

22. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code.

**(i) Proper Classification—Sections 1122 and 1123(a)(1).**

23. The classification of Claims and Interests under the Plan is proper under the Bankruptcy Code. In accordance with sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article III of the Plan provides for the separate classification of Claims and Interests into eleven Classes. Valid business, factual, and legal reasons exist for the separate classification of such Classes of Claims and Interests. The classifications were not implemented for any improper purpose and do not unfairly discriminate between, or among, Holders of Claims or Interests. Each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Accordingly, the Plan satisfies the requirements of sections 1122(a), 1122(b), and 1123(a)(1) of the Bankruptcy Code.

**(ii) Specified Unimpaired Classes—Section 1123(a)(2).**

24. Article III of the Plan specifies that Claims in Class 1 (Secured Tax Claims) and Class 2 (Other Priority Claims) are Unimpaired under the Plan and Claims and Interests in Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests), respectively, are either Impaired or Unimpaired under the Plan.

25. Article III of the Plan specifies that Claims in the following Classes are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code:

<b>Class</b>	<b>Designation</b>
1	Secured Tax Claims
2	Other Priority Claims

26. Additionally, Article II of the Plan specifies that Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, and all fees due and payable pursuant to section 1930 of title 28 of the United States Code before the Effective Date will be paid in full in accordance with the terms of the Plan, although these Claims are not separately classified under the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

**(iii) Specified Treatment of Impaired Classes—Section 1123(a)(3).**

27. The Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code. Article III of the Plan specifies that Claims and Interests, as applicable, in the following Classes (collectively, the “Impaired Classes”) are Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code, and describes the treatment of such Classes.

<b>Class</b>	<b>Designation</b>
3	Account Holder Claims
4A	OpCo General Unsecured Claims
4B	HoldCo General Unsecured Claims
4C	TopCo General Unsecured Claims
5	Alameda Loan Facility Claims
6	Section 510(b) Claims
9	Existing Equity Interests

**(iv) No Discrimination—Section 1123(a)(4).**

28. The Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest.

**(v) Adequate Means for Plan Implementation—Section 1123(a)(5).**

29. The Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code. The provisions in Article IV and elsewhere in the Plan and the Plan Supplement, and in the exhibits and attachments to the Disclosure Statement provide, in detail, adequate and proper means for the Plan’s implementation, including the: (a) effectuation of the Restructuring Transactions contemplated by the Plan, the Restructuring Transactions Memorandum, and the Customer Onboarding Protocol; (b) consummation of the Sale Transaction by the Outside Date pursuant to the Asset Purchase Agreement; (c) if the Sale Transaction is not consummated by the Outside Date pursuant to the Asset Purchase Agreement, then the effectuation of the Liquidation Transaction in

accordance with the Liquidation Procedures; (d) adoption and implementation of the Employee Transition Plan; (e) retention of certain Claims or Causes of Action held by the Debtors or their Estates, which shall be assigned and transferred to the Wind-Down Debtor after the Effective Date; (f) effectuation of the terms of the D&O Settlement; (g) authorization for the Debtors and the Wind-Down Debtor, as applicable, to take all actions as may be necessary or appropriate to effectuate the Restructuring Transactions and any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan; (h) establishment of the Wind-Down Debtor pursuant to the Plan Administrator Agreement and the transfer of the Wind-Down Debtor Assets to the Wind-Down Debtor after the Effective Date; (i) the funding and sources of consideration for the Plan distributions; and (j) settlement, satisfaction, and compromise of Claims and Interests as set forth in the Plan.

**(vi) Voting Power of Equity Securities—Section 1123(a)(6).**

30. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of nonvoting equity securities. On the Effective Date the Wind-Down Debtor Assets shall, subject to the Plan Administrator Agreement, be transferred to and vest in the Wind-Down Debtor. The Wind-Down Debtor shall be managed by the Plan Administrator and shall be subject to a Wind-Down Debtor Oversight Committee. The Plan Administrator shall be responsible for, among other things: (a) implementing the Wind-Down Debtor, and making distributions contemplated by the Plan; (b) marshalling, marketing for sale, and winding down any of the Debtors' assets constituting Wind-Down Debtor Assets; (c) appointing an independent director at each Debtor to act as a fiduciary for such Debtor entity in connection with the resolution of the Intercompany Claims; (d) overseeing the accounts of the Debtors and the Wind-Down Debtor and the wind-down and dissolution of the Debtors and the Wind-Down Debtor, including effectuating the transactions described in the Restructuring

Transactions Memorandum; (e) receiving, maintaining, conserving, supervising, prosecuting, collecting, settling, managing, investing, protecting, and where appropriate, causing the Wind-Down Debtor to abandon the Wind-Down Debtor Assets, including causing the Wind-Down Debtor to invest any moneys held as Wind-Down Debtor Assets; (f) opening and maintaining bank accounts on behalf of or in the name of the Debtors or the Wind-Down Debtor, including, in the Plan Administrator's discretion, separate bank accounts for each of the Debtors; (g) entering into any agreement or executing any document or instrument required by or consistent with the Plan, this Confirmation Order, or the Plan Administrator Agreement, and to perform all obligations thereunder; (h) collecting and liquidating all Wind-Down Debtor Assets, including the sale of any Wind-Down Debtor Assets; (i) protecting and enforcing the rights to the Wind-Down Debtor Assets (including any Vested Causes of Action and Contributed Third-Party Claims) vested in the Wind-Down Debtor and Plan Administrator by the Plan Administrator Agreement by any method deemed appropriate, including, without limitation, by judicial proceedings or otherwise; (j) investigating any Wind-Down Debtor Assets, and any other potential Vested Causes of Action and Contributed Third-Party Claims; (k) reviewing, reconciling, compromising, settling, objecting, or prosecuting Claims or Interests of any kind; (l) seeking the examination of any Person pursuant to Federal Rule of Bankruptcy Procedure 2004; (m) retaining professionals, disbursing agents, and other agents, independent contractors, and third parties pursuant to the Plan Administrator Agreement and paying the reasonable compensation thereof; (n) paying all lawful expenses, debts, charges, taxes, and other liabilities, and making all other payments relating to the Wind-Down Debtor Assets, solely out of Wind-Down Debtor Assets; (o) prosecuting and settling the Vested Causes of Action, including, without limitation, the 3AC Claims, FTX Claims, Alameda Claims, Contributed Third-Party Claims, and any causes of action not included in the





Wind-Down Debtor, and filing tax returns for the Debtors or the Wind-Down Debtor pursuant to and in accordance with the Plan, and paying taxes, if any, payable for and on behalf of the Debtors or the Wind-Down Debtor, as applicable; *provided, however*, that notwithstanding any other provision of the Plan Administrator Agreement, the Plan Administrator shall not have any responsibility or personal liability in any capacity whatsoever for the signing or accuracy of the Debtors' income tax returns that are due to be filed after the Effective Date or for any tax liability related thereto; (x) abandoning or donating to a charitable organization qualifying under IRC section 501(c)(3) any Wind-Down Debtor Assets that the Plan Administrator determines to be too impractical to distribute or of inconsequential value; (y) seeking a determination of tax liability or refund under Bankruptcy Code section 505; (z) establishing reserves for taxes, assessments, and other expenses of administration of the Debtors or the Wind-Down Debtor as may be necessary and appropriate for the proper operation of matters incident to the Debtors or the Wind-Down Debtor; paying Wind-Down Debtor Expenses; (aa) if the Plan Administrator deems appropriate in the Plan Administrator's sole discretion, seeking to establish a bar date for filing proofs of Interest in any Debtor or otherwise to determine the holders and extent of Allowed Interests in any Debtor; (bb) purchasing and carrying all insurance policies that the Plan Administrator deems reasonably necessary or advisable and paying all associated insurance premiums and costs; (cc) undertaking all administrative functions remaining in the Chapter 11 Cases to the extent necessary to carry out the Debtors', the Wind-Down Debtor's, or the Plan Administrator's duties under the Plan, including reporting and making required payments of fees to the U.S. Trustee and overseeing the closing of the Chapter 11 Cases; (dd) retaining, terminating, appointing, hiring, or otherwise employees, personnel, management, and directors at any of the Debtors to the extent necessary to carry out the purposes of the Plan Administrator Agreement and the Plan, including, without

limitation, to address any disputes between the Debtors; (ee) exercising, implementing, enforcing, and discharging all of the terms, conditions, powers, duties, and other provisions of the Plan, the Confirmation Order, and the Plan Administrator Agreement; and (ff) taking all other actions consistent with the provisions of the Plan and the Plan Administrator Agreement that the Plan Administrator deems reasonably necessary or desirable to administer the Debtors and the Wind-Down Debtor. Further, on or prior to the Effective Date, the Wind-Down Debtor's organizational documents will be amended to prohibit the issuance of non-voting equity securities. Accordingly, the Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

**(vii) Directors and Officers—Section 1123(a)(7).**

31. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. Article IV.J of the Plan provides that, upon filing of the certificate of dissolution (or equivalent document), the Wind-Down Debtor will be dissolved. Article IV.H of the Plan provides for the formation of the Wind-Down Debtor for the benefit of the Wind-Down Debtor Beneficiaries. The Wind-Down Debtor shall be managed by the Plan Administrator and shall be subject to a Wind-Down Debtor Committee. The selection of the Plan Administrator by the Committee, in consultation with the Debtors, is consistent with the interests of Holders of Claims and Interests and public policy. The appointment of the Plan Administrator identified in the Plan Supplement is approved, and the Plan Administrator's duties shall commence as of the Effective Date. In accordance with the Plan Administrator Agreement, the Plan Administrator shall serve in such capacity through the earlier of (i) the date on which the Wind-Down Debtor is dissolved in accordance with the Plan Administrator Agreement, and (ii) the date on which the Plan Administrator resigns, is terminated, or is otherwise unable to serve; *provided, however*, that, in the event that the Plan Administrator resigns, is terminated, or is otherwise unable to serve, the Wind-Down Debtor Oversight Committee shall appoint a successor to serve as the Plan

Administrator in accordance with the Plan Administrator Agreement. If the Wind-Down Debtor Oversight Committee does not appoint a successor within the time periods specified in the Plan Administrator Agreement, then the Court, upon the motion of any party-in-interest, including counsel to the Wind-Down Debtor, shall approve a successor to serve as the Plan Administrator. Accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

**(viii) Impairment / Unimpairment of Classes—Section 1123(b)(1).**

32. The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. Article III of the Plan leaves each Class of Claims and Interests Impaired or Unimpaired.

**(ix) Treatment of Executory Contracts and Unexpired Leases—Section 1123(b)(2).**

33. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. Article V of the Plan provides that, on the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with Confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy other than the Side-A Policy. Each of the Debtors' determinations regarding the assumption and rejection of

Executory Contracts and Unexpired Leases is based on and within the sound business judgment of the Debtors, is necessary to the implementation of the Plan, and is in the best interests of the Debtors, their Estates, Holders of Claims and Interests, and other parties in interest in these Chapter 11 Cases.

**(x) Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action—Section 1123(b)(3).**

34. The Plan is consistent with section 1123(b)(3) of the Bankruptcy Code. Except as otherwise provided in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies settled, compromised, satisfied, or otherwise resolved pursuant to the Plan. The Plan is deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of this Confirmation Order constitutes the Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as well as a finding that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

**(xi) Additional Plan Provisions—Section 1123(b)(6).**

35. The other discretionary provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code.

**Q. Debtor Compliance with the Bankruptcy Code—Section 1129(a)(2).**

36. The Debtors have complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court, and thus, satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

- a. is an eligible debtor under section 109, and a proper proponent of the Plan under section 1121(a), of the Bankruptcy Code; and
- b. complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, the Bankruptcy Rules, the Local Rules, any applicable nonbankruptcy law, rule and regulation, the Conditional Disclosure Statement Order, and all other applicable law, in transmitting the Solicitation Packages and related documents and notices, and in soliciting and tabulating the votes on the Plan.

**R. Plan Proposed in Good Faith—Section 1129(a)(3).**

37. The Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code. The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In so determining, the Court has examined the totality of the circumstances surrounding the filing of these Chapter 11 Cases, the Plan itself, the process leading to Confirmation, including the support of Holders of Claims and Interests for the Plan, and the transactions to be implemented pursuant thereto. These Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to implement the Restructuring Transactions and maximize the value of the Estates and the recoveries of Holders of Claims and Interests.

**S. Payment for Services or Costs and Expenses—Section 1129(a)(4).**

38. The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

**T. Directors, Officers, and Insiders—Section 1129(a)(5).**

39. Because the Plan provides for the winding down and dissolution of the Debtors, section 1129(a)(5) of the Bankruptcy Code does not apply to the Debtors. To the extent section 1129(a)(5) applies to the Wind-Down Debtor, the requirements of this provision are satisfied by, among other things, disclosing the identity and terms of compensation of the Plan Administrator and the Wind-Down Debtor Oversight Committee.

**U. No Rate Changes—Section 1129(a)(6).**

40. Section 1129(a)(6) of the Bankruptcy Code is not applicable to these Chapter 11 Cases. The Plan does not propose any rate change subject to the jurisdiction of any governmental regulatory commission.

**V. Best Interest of Creditors—Section 1129(a)(7).**

41. The Plan is in the best interests of the Debtors' creditors and satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis attached to the Disclosure Statement and the other evidence related thereto in support of the Plan that was proffered or adduced in the Declarations or at, prior to, or in connection with the Combined Hearing: (a) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that Holders of Allowed Claims and Interests in each Class will recover at least as much under the Plan on account of such Claim or Interest, as of the Effective Date, as such Holder would receive if the Debtors were liquidated, on the Effective Date, under chapter 7 of the Bankruptcy Code.



**W. Acceptance by Certain Classes—Section 1129(a)(8).**

42. Class 1 (Secured Tax Claims) and Class 2 (Other Priority Claims) are Unimpaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 3 (Account Holder Claims), Class 4B (HoldCo General Unsecured Claims), and Class 4C (TopCo General Unsecured Claims) are impaired under the Plan and voted to accept the Plan. Class 5 (Alameda Loan Facility Claims), Class 6 (Section 510(b) Claims), and Class 9 (Existing Equity Holders) are impaired under the Plan and are deemed to reject the Plan. Because the Plan has not been accepted by the Deemed Rejecting Classes, the Debtors seek Confirmation under section 1129(b), solely with respect to the Deemed Rejecting Classes, rather than section 1129(a)(8) of the Bankruptcy Code. Although section 1129(a)(8) has not been satisfied with respect to the Deemed Rejecting Classes, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to the Deemed Rejecting Classes and thus satisfies section 1129(b) of the Bankruptcy Code with respect to such Classes as described further below. As a result, the requirements of section 1129(b) of the Bankruptcy Code are satisfied.

**X. Treatment of Claims Entitled to Priority Under Section 507(a) of the Bankruptcy Code—Section 1129(a)(9).**

43. The treatment of Allowed Administrative Claims, Allowed Professional Fee Claims, and Allowed Priority Tax Claims under Article II of the Plan, and of Allowed Other Priority Claims under Article III of the Plan, satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code.

**Y. Acceptance by At Least One Impaired Class—Section 1129(a)(10).**

44. The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced by the Voting Report, the Voting Classes voted to accept the Plan by the requisite

numbers and amounts of Claims, determined without including any acceptance of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code), specified under the Bankruptcy Code.

**Z. Feasibility—Section 1129(a)(11).**

45. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The evidence supporting the Plan proffered or adduced by the Debtors at or before the Combined Hearing: (a) is reasonable, persuasive, credible, and accurate as of the dates such evidence was prepared, presented, or proffered; (b) has not been controverted by other persuasive evidence; (c) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization; (d) establishes that the Distribution Agent, or the Wind-Down Debtor, as applicable, will have sufficient funds available to meet their obligations under the Plan—including sufficient amounts of Cash, Cryptocurrency, or other consideration, as applicable, to reasonably ensure payment of, among other things, Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Account Holder Claims, and Allowed General Unsecured Claims, as applicable, pursuant to the terms of the Plan and in accordance with section 507(a) of the Bankruptcy Code; and (e) establishes that the Wind-Down Debtor will have the financial wherewithal to satisfy their obligations following the Effective Date.

**AA. Payment of Statutory Fees—Section 1129(a)(12).**

46. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Article XII.C of the Plan provides for the payment of all fees due and payable under 28 U.S.C. § 1930 by each of the Wind-Down Debtor (or the Distribution Agent on behalf of the Wind-Down Debtor).

**BB. Continuation of Employee Benefits—Section 1129(a)(13).**

47. The Debtors do not have any remaining obligations to pay retiree benefits (as defined in section 1114 of the Bankruptcy Code). Therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases or the Plan.

**CC. Non-Applicability of Certain Sections—Sections 1129(a)(14), (15), and (16).**

48. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals, and are not nonprofit corporations.

**DD. “Cram Down” Requirements—Section 1129(b).**

49. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code. Notwithstanding the fact that the Deemed Rejecting Classes have not accepted the Plan, the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code. *First*, all of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met. *Second*, the Plan is fair and equitable with respect to Class 5 (Alameda Loan Facility Claims), Class 6 (Section 510(b) Claims), and Class 9 (Existing Equity Interests). The Plan has been proposed in good faith, is reasonable, and meets the requirements that (a) no Holder of any Claim or Interest that is junior to each such Class will receive or retain any property under the Plan on account of such junior Claim or Interest, and (b) no Holder of a Claim or Interest in a Class senior to such Classes is receiving more than payment in full on account of its Claim or Interest. Specifically, to the extent Class 8 (Intercompany Interests) are Reinstated, such treatment is provided for administrative convenience and efficiency, and not on account of such Interests, and will not alter the treatment provided for any other Holder of any Claim or Interest. Further, Class 7 (Intercompany Claims) will receive the treatment as determined by the Court. Accordingly, the Plan is fair and equitable towards all Holders of Claims and Interests in the Deemed Rejecting

Classes. *Third*, the Plan does not discriminate unfairly with respect to the Deemed Rejecting Classes because similarly situated Claim and Interest Holders will receive substantially similar treatment on account of their Claims or Interests, as applicable, in such class. Therefore, the Plan may be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

**EE. Only One Plan—Section 1129(c).**

50. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan is the only chapter 11 plan filed in each of these Chapter 11 Cases.

**FF. Principal Purpose of the Plan—Section 1129(d).**

51. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act.

**GG. Not Small Business Cases—Section 1129(e).**

52. The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code does not apply to the Chapter 11 Cases.

**HH. Good Faith Solicitation—Section 1125(e).**

53. The Debtors have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to support and consummation of the Plan, including the solicitation and receipt of acceptances of the Plan, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

**II. Satisfaction of Confirmation Requirements.**

54. Based on the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code.

**JJ. Likelihood of Satisfaction of Conditions Precedent to the Effective Date.**

55. Each of the conditions precedent to the Effective Date, as set forth in Article IX.A of the Plan, has been or is reasonably likely to be satisfied or, as applicable, waived in accordance with Article IX.B of the Plan.

**KK. Implementation.**

56. All documents and agreements necessary to implement the transactions contemplated by the Plan, including those contained or summarized in the Plan Supplement, and all other relevant and necessary documents (including the Asset Purchase Agreement) have been negotiated in good faith and at arm's length, are in the best interests of the Debtors, and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal, state, or local law. The Debtors are authorized to take any action reasonably necessary or appropriate to consummate such agreements and the transactions contemplated thereby.

**LL. Executory Contracts and Unexpired Leases.**

57. The Debtors' decisions to assume or reject certain Executory Contracts and Unexpired Leases, as provided in Article V of the Plan and in the Plan Supplement, are reasonable exercises of the Debtors' business judgment. The Debtors have demonstrated adequate assurance of future performance of the assumed Executory Contracts and Unexpired Leases within the meaning of section 365(b)(1)(C) of the Bankruptcy Code by the Wind-Down Debtor.

58. Except with respect to the Executory Contracts and Unexpired Leases discussed in the following paragraph of this Confirmation Order, the amounts set forth in the Plan Supplement (the "Cure Amounts") are the sole amounts necessary to be paid upon assumption of the associated Executory Contracts and Unexpired Leases under section 365(b)(1)(A) and (B) of the Bankruptcy Code, and the payment of such amounts will effect a cure of all defaults existing under such

Executory Contracts and Unexpired Leases and compensate the counterparties to such Executory Contracts and Unexpired Leases for any actual pecuniary loss resulting from all defaults existing under such Executory Contracts and Unexpired Leases as of the Effective Date.

59. The objections of counterparties to the assumption of their Executory Contracts and Unexpired Leases, to the extent that such objection was timely raised in accordance with Article V.C of the Plan, are preserved and will be considered by the Court at a date and time to be scheduled. As provided in the Conditional Disclosure Statement Order and the Solicitation Packages, the Debtors and the Wind-Down Debtor have reserved the right to (a) add any Executory Contract or Unexpired Lease to the Assumed Contract Schedule and assume such Executory Contract or Unexpired Lease pursuant to the terms of the Plan, or remove any Executory Contract or Unexpired Lease from the Assumed Contract Schedule, in each case, up until the Effective Date and (b) contest any Claim asserted in connection with rejection of any Executory Contract or Unexpired Lease.

**MM. Disclosure of Facts.**

60. The Debtors have disclosed all material facts regarding the Plan, including with respect to consummation of the Sale Transaction and the Liquidation Transaction, as applicable.

**NN. Appropriate Exercise of Business Judgment.**

61. The Debtors' decision to effectuate the Sale Transaction or the Liquidation Transaction, as applicable, is an appropriate exercise of their business judgment.

**OO. Good Faith.**

62. The Debtors, the Released Parties, and the Releasing Parties have been and will be acting in good faith if they proceed to: (a) consummate the Plan and the agreements, settlements, transactions, and transfers contemplated thereby; and (b) take the actions authorized and directed by this Confirmation Order to wind-down the Debtors' businesses and effect the Sale Transaction



or the Liquidation Transaction, as applicable, and the other Restructuring Transactions. The Released Parties have made a substantial contribution to these Chapter 11 Cases.

**PP. Essential Elements of the Plan.**

63. The Sale Transaction is an essential element of the Plan, and consummation of the Sale Transaction is in the best interests of the Debtors, their estates, and their creditors. The Debtors have exercised sound business judgment in selecting the Purchaser and the Debtors have done so without collusion and in good faith. The Purchaser is consummating the Sale Transaction in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code. The Purchaser has proceeded in good faith and without collusion in all respects in connection with the Sale Transaction. The Purchaser is therefore entitled to all of the protections afforded under section 363(m) of the Bankruptcy Code, and the Sale Transaction, to the extent consummated, may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

64. The Debtors' marketing process with respect to the Sale Transaction afforded a full, fair, and reasonable opportunity for any party to make a higher or otherwise better offer. No other party or parties has offered to purchase the Acquired Assets for greater overall value to the Debtors' Estates than the Purchaser. The Asset Purchase Agreement will provide a greater recovery for the Debtors' Estates than would be provided by any other available alternative. The Debtors' determination that the Sale Transaction is the most value-maximizing transaction is a valid and sound exercise of the Debtors' business judgment. Consummation of the Sale Transaction is in the best interests of the Debtors' Estates, their creditors, and other parties in interest.

65. The consideration provided by the Purchaser pursuant to the Asset Purchase Agreement (a) is fair and reasonable, (b) constitutes the best offer for the Acquired Assets, and (c) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform

Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code) and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

66. The Purchaser is not a mere continuation or substantial continuation of the Debtors or their Estates and there is no continuity of enterprise or common identity between the Purchaser and any of the Debtors. The Purchaser is not holding itself out to the public as a continuation of any of the Debtors. The Purchaser is not a successor to the Debtors or their Estates by reason of any theory of law or equity, and the Sale Transaction does not amount to a consolidation, merger, or de facto merger of the Purchaser with or into any of the Debtors. The Purchaser has entered into the Asset Purchase Agreement in material reliance on and with fair consideration provided for the Sale Transaction being free and clear of all claims and interests relating to the Debtors arising prior to the closing of the Sale Transaction, including any successor or vicarious liabilities of any kind or nature, as set forth herein and in the Asset Purchase Agreement, and would not have entered into the Asset Purchase Agreement or the Sale Transaction without such terms and the findings herein.

67. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtors may sell, and upon the Closing of the Sale Transaction shall be deemed to have sold, assets and property pursuant to the Asset Purchase Agreement free and clear of any claims, liens, encumbrances, or other interests of any kind or nature whatsoever other than as expressly provided under the Asset Purchase Agreement. In addition to and without limiting the foregoing, the proposed Sale Transaction is to be consummated under the Plan, and the assets and property to be sold pursuant to the Sale Transaction are dealt with by the Plan; therefore, except as expressly provided under the Asset Purchase Agreement, the Debtors may sell, and upon the

Closing of the Sale Transaction shall be deemed to have sold, assets and property pursuant to the Asset Purchase Agreement free and clear of any claims, liens, encumbrances, or other interests of any kind or nature whatsoever pursuant to section 1141(c) of the Bankruptcy Code.

68. The Debtors may sell, and upon the Closing of the Sale Transaction shall be deemed to have sold, such assets free and clear of all claims, liens, encumbrances, and other interests of any kind or nature whatsoever (other than as expressly permitted under the Asset Purchase Agreement) because, in each case, one or more of the standards set forth in sections 363(f)(1)–(5), 1129(b)(2)(A)(ii), 1141(a), or 1141(c) of the Bankruptcy Code has been satisfied. All holders of such claims, liens, encumbrances, or other interests against the Debtors, their Estates, or any of the assets subject to the Sale Transaction (a) who did not object, or who withdrew their objections, to the Sale Transaction are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code and (b) are bound by the Plan pursuant to section 1141(a) of the Bankruptcy Code. All holders of such claims, liens, encumbrances, or other interests are adequately protected by having their claims, liens, encumbrances, or other interests, if any, in each instance against the Debtors, their Estates, or any of the assets subject to the Sale Transaction, attach to the proceeds of the Sale Transaction ultimately attributable to the assets in which such creditor alleges a claim, lien, encumbrance, or other interest, in the same order of priority, with the same validity, force, and effect that such claim, lien, encumbrance, or other interest had prior to consummation of the Sale Transaction, subject to any claims and defenses the Debtors and their Estates may possess with respect thereto, and with such claims, liens, encumbrances, or other interests being treated in accordance with the Plan.

69. Article VIII.A of the Plan describes certain releases granted by the Debtors, the Wind-Down Debtor, and the Debtors' and the Wind-Down Debtor's Estates (the "Debtor

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71. Article VIII.B of the Plan describes certain releases granted by the Releasing Parties (the “Third-Party Release”). The Third-Party Release provides finality for the Debtors, the Wind-Down Debtor, and the other Released Parties. The Third-Party Release is consensual with respect to the Releasing Parties. The Combined Hearing Notice sent to Holders of Claims and Interests and published in *The New York Times* (National Edition) and the *Financial Times* (International Edition) on February 3, 2023, and the ballots and notices, as applicable, sent to Holders of Claims and Interests unambiguously stated that the Plan contains the Third-Party Release and that each Holder of Claims or Interests may elect not to grant such Third-Party Release. Such release provisions of the Plan were conspicuous, emphasized with boldface type in the Plan, the Disclosure Statement, and the ballots and notices. Among other things, the Plan provides appropriate and specific disclosure with respect to the claims and Causes of Action that are subject to the Third-Party Release, and no other disclosure or notice is necessary. The Third-Party Release is a necessary and integral element of the Plan, and is fair, equitable, reasonable, and in the best interests of the Debtors, the Debtors’ Estates, and all Holders of Claims and Interests. Also, the Third-Party Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good-faith settlement and compromise of such the Claims released by the Third-Party Releases; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; (f) a sound exercise of the Debtors’ business judgment; and (g) except to the extent contemplated by Article IV.E and Article IV.F of the Plan, a bar to any of the Debtors or Wind-Down Debtor or their respective Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

73. The exculpation described in Article VIII.C of the Plan (the “Exculpation”) is appropriate under applicable law because it was proposed in good faith, was formulated following extensive good-faith, arm’s-length negotiations with key constituents, and is appropriately limited in scope. Without limiting anything in the Exculpation, each Exculpated Party has participated in these Chapter 11 Cases in good faith and, except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated as set forth in the Plan; *provided* that the foregoing “Exculpation” shall have no effect on the liability of any entity that results from any such act or omission that is determined by a Final Order to have constituted actual fraud, gross negligence, or willful misconduct, but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in any and all activities potentially underlying any Exculpated Claim in good faith and in compliance with the applicable laws. The Exculpation, including its carve-out for actual fraud, gross negligence, or willful misconduct, is consistent with established practice in this jurisdiction and others.



75. Article IV.P of the Plan provides that, in accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold against any Entity shall vest in the Wind-Down Debtor, except as otherwise provided in the Plan, including Article VIII of the Plan. The Wind-Down Debtor, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Wind-Down Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Court in accordance with the Plan. The provisions regarding the preservation of Causes of Action in the Plan, including the Plan Supplement, are appropriate, fair, equitable, and reasonable, and are in the best interests of the Debtors, the Debtors' estates, and Holders of Claims and Interests.

76. The full release and discharge of all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates described in Article VIII.E of the Plan (the "Lien Release") is necessary to implement the Plan. The provisions of the Lien Release are appropriate, fair, equitable, and reasonable and are in the best interests of the Debtors, the Debtors' estates, and Holders of Claims and Interests.

### **ORDER**

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED, ADJUDGED, DECREED, AND DETERMINED THAT:

77. **Findings of Fact and Conclusions of Law.** The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made

applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact is determined to be a conclusion of law, it is deemed so, and vice versa.

78. **Approval of the Disclosure Statement.** The Disclosure Statement, the Solicitation Packages, and the Solicitation Procedures are approved on a final basis pursuant to section 1125 of the Bankruptcy Code.

79. **Solicitation.** To the extent applicable, the solicitation of votes on the Plan complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, all other provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations, and was appropriate and satisfactory and is approved in all respects.

80. **Notice of Combined Hearing.** The Notice of Combined Hearing was appropriate and satisfactory and is approved in all respects.

81. **Confirmation of the Plan.** The Plan is approved in its entirety and CONFIRMED under section 1129 of the Bankruptcy Code. The terms of the Plan, including the Plan Supplement, are incorporated by reference into and are an integral part of this Confirmation Order.

82. **Objections.** All objections and all reservations of rights pertaining to Confirmation of the Plan and approval of the Disclosure Statement that have not been withdrawn, waived, or consensually resolved are overruled on the merits unless otherwise indicated in this Confirmation Order. All withdrawn objections, if any, are deemed withdrawn with prejudice. All objections to approval of the Disclosure Statement and Confirmation of the Plan not filed and served prior to the Objection Deadline, if any, are deemed waived and shall not be considered by the Court.

83. All parties have had a full and fair opportunity to litigate all issues raised or that might have been raised in the objections to approval of the Disclosure Statement and Confirmation

of the Plan, and the objections have been fully and fairly litigated or resolved, including by agreed-upon reservations of rights as set forth in this Confirmation Order.

84. **Plan Modifications.** The Plan Modifications do not materially adversely affect the treatment of any Claim against or Interest in any of the Debtors under the Plan, and are hereby approved pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019. After giving effect to the Plan Modifications, the Plan continues to meet the requirements of sections 1122 and 1123 of the Bankruptcy Code. The filing with the Court on February 28, 2023 of the modifications to the Plan and the disclosure of any additional Plan Modifications on the record at the Combined Hearing constitute due and sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

85. **Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Interests who voted to accept the Plan or who are conclusively presumed to accept the Plan are deemed to have accepted the Plan, as modified by the Plan Modifications. No Holder of a Claim or Interest shall be permitted to change its vote as a consequence of the Plan Modifications.

86. **Restructuring Transactions.** On or before the Effective Date, the applicable Debtors will take any action as may be necessary or advisable to effectuate the Restructuring Transactions described in the Plan, the Restructuring Transactions Memorandum, and the Customer Onboarding Protocol, including: (a) the execution and delivery of any appropriate

agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (d) the transfer or distribution of any Cryptocurrency or Cash pursuant to the Asset Purchase Agreement and the Plan, as applicable; (e) the execution and delivery of the Plan Administrator Agreement; (f) any transactions necessary or appropriate to form the Wind-Down Debtor; (g) such other transactions that are required to effectuate the Restructuring Transactions, including any sales, mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (h) all transactions necessary to provide for the purchase of the Acquired Assets by Purchaser under the Asset Purchase Agreement; and (i) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

87. This Confirmation Order shall, and shall be deemed to, pursuant to sections 1123 and 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Restructuring Transactions, the Sale Transaction, and the Liquidation Transaction, as applicable.

88. **The Sale Transaction.** The Sale Transaction and the Asset Purchase Agreement, all other ancillary documents, and all of the terms and conditions thereof, are hereby approved,

pursuant to sections 105, 363, 364, and 554 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004, and 9014, each as applicable. Entry of this Confirmation Order shall authorize the Debtors, the Purchaser, and the Wind-Down Debtor, as applicable, to undertake the transactions contemplated by the Asset Purchase Agreement, as applicable, including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code.

89. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to (a) consummate the Sale Transaction pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement, (b) close the Sale Transaction as contemplated in the Asset Purchase Agreement, and (c) execute and deliver, perform under, consummate, implement, and fully close the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement and the Sale Transaction.

90. Subject to the restrictions set forth in this Confirmation Order, the Plan, and the Asset Purchase Agreement, the Debtors and the Purchaser hereby are authorized to take any and all actions as may be necessary or desirable, including any actions that otherwise would require further approval by shareholders, members, or its board of directors, as the case may be, without the need of obtaining such approvals, to implement the Sale Transaction, and any actions taken by the Debtors or the Purchaser necessary or desirable to implement the Sale Transaction prior to the date of this Confirmation Order, hereby are approved and ratified.

91. This Confirmation Order and the terms and provisions of the Asset Purchase Agreement shall be binding in all respects upon the Debtors, their affiliates, their estates, all creditors of and holders of equity interests in any Debtor, any holders of Liens, Claims, or other

interests (whether known or unknown) in, against, or on all or any portion of the Acquired Assets, all counterparties to any executory contract or unexpired lease of the Debtors, the Purchaser and all successors and assigns of the Purchaser, the Acquired Assets, and any trustees, examiners, or receivers, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Confirmation Order and the Asset Purchase Agreement shall inure to the benefit of the Debtors, their estates and creditors, the Purchaser, and the respective successors and assigns of each of the foregoing.

92. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Acquired Assets in accordance with the terms of the Asset Purchase Agreement and such transfer shall constitute a legal, valid, binding, and effective sale of the Acquired Assets and shall vest Purchaser with title to the Acquired Assets subject to the Asset Purchase Agreement, and the Acquired Assets shall be free and clear of all Liens, Claims, Encumbrances, and other interests of any kind or nature whatsoever (other than as expressly permitted under the Asset Purchase Agreement), with all such Liens, Claims, or other interests to attach to the cash proceeds of the Purchase Price ultimately attributable to the property against or in which such Liens, Claims, or other interests are asserted, subject to the terms thereof, with the same validity, force, and effect, and in the same order of priority, which such Liens, Claims, or other interests had prior to the Transaction, subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

93. The sale of the Acquired Assets to the Purchaser pursuant to the Asset Purchase Agreement and the consummation of the transactions contemplated by the Asset Purchase Agreement do not require any consents other than as specifically provided for in the Asset



Purchase Agreement. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement. A certified copy of this Confirmation Order may be filed with the appropriate clerk or recorded with the recorder of any state, county, or local authority to act to cancel any of the Liens, Claims, and other encumbrances of record.

94. If any person or entity that has filed statements or other documents evidencing Claims or Liens on, or interests in, all or any portion of the Acquired Assets shall not have delivered to the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Claims, Liens, or interests which the person or entity has or may assert with respect to all or any portion of the Acquired Assets, the Debtors are hereby authorized, and the Purchaser is hereby authorized, on behalf of the Debtors and the Debtors' creditors, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets. The Debtors and the Purchaser are each authorized to file a copy of this Confirmation Order, which, upon filing, shall be conclusive evidence of the release and termination of such Claim, Lien or interest.

95. This Confirmation Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or

contract, to accept, file, register, or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

96. All persons and entities that are presently, or on the Closing may be, in possession of some or all of the Acquired Assets pursuant to the Asset Purchase Agreement are hereby directed to surrender possession of the Acquired Assets to the Purchaser unless such person or entity was a good faith, bona fide purchaser of the Acquired Assets without notice of the Debtors' rights in such property. Subject to the terms, conditions, and provisions of this Confirmation Order, all persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and/or transfer the Acquired Assets to the Purchaser in accordance with the terms of the Asset Purchase Agreement and this Confirmation Order.

97. Except as otherwise permitted by the Asset Purchase Agreement, the Plan, or this Confirmation Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding Liens, Claims, or other interests of any kind or nature whatsoever against or in all or any portion of the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinate), arising under or out of, in connection with, or in any way relating to the Debtors, the Acquired Assets, the operation of the Debtors' business prior to the closing of the Sale Transaction, or the transfer of the Acquired Assets to the Purchaser, hereby are forever barred, estopped and permanently enjoined from asserting against the Purchaser, any of

the foregoing's affiliates, successors, or assigns, their property or the Acquired Assets, such persons' or entities' Liens, Claims, or interests in and to the Acquired Assets, including, without limitation, the following actions: (a) commencing or continuing in any manner any action or other proceeding against the Purchaser and each of its affiliates, successors, assets or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser and each of its affiliates, successors, assets, or properties; (c) creating, perfecting, or enforcing any Lien or other Claim against the Purchaser and each of its affiliates, successors, assets, or properties; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Purchaser, its affiliates or its successors; or (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Confirmation Order, or the agreements or actions contemplated or taken in respect thereof.

98. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Acquired Assets to the Purchaser in accordance with the terms of the Asset Purchase Agreement, the Plan, and this Confirmation Order.

99. Purchaser shall have no Liability (as defined in the Asset Purchase Agreement) for any Excluded Liability, and, other than as expressly set forth in the Asset Purchase Agreement, Purchaser is not assuming, by virtue of the consummation of the Sale Transaction, nor shall the Purchaser be liable or responsible for, as a successor or otherwise (including under any theory of successor or vicarious liability of any kind or character or any other theory of law or equity, including any theory of antitrust, environmental successor or transferee liability, labor law, *de facto*

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For the avoidance of doubt, (i) nothing herein shall release the Purchaser with respect to its obligations as Distribution Agent of Cryptocurrency and Cash to Holders of Account Holder Claims and OpCo General Unsecured Creditor Claims as provided in, and subject to the terms and conditions of, the Asset Purchase Agreement and the Plan, and (ii) notwithstanding the transfer to Purchaser, pursuant to the Asset Purchase Agreement, of any Acquired Assets that constitute Coins or Cash, each User and Eligible Creditor shall retain, from and after the Closing of the Sale Transaction, all right, title, and interest in and to such Coins and Cash allocated to it on the Binance.US Platform in accordance with the Asset Purchase Agreement (notwithstanding any terms and conditions of the Binance.US Platform to the contrary, if any) through and including such time as such Coins and Cash are returned or distributed to Seller or such User and Eligible Creditor, as applicable, and such Coins and Cash shall be held by Purchaser solely in a custodial capacity in trust and solely for the benefit of Seller or the applicable User or Eligible Creditor.

100. The Asset Purchase Agreement and any related documents or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court.

101. Paragraphs 88–100 of this Confirmation Order shall be deemed to be excised from this Confirmation Order in the event that the Asset Purchase Agreement is terminated prior to Closing. For the avoidance of doubt, subject to the requirements set forth in the Asset Purchase Agreement (including, without limitation, Sections 6.22 and 5.2(c) thereof), the Debtors may exercise the “fiduciary out” in Section 8.1(g) of the Asset Purchase Agreement at any time prior to Closing.

102. **Corporate Action.** Upon the Effective Date, all actions contemplated under the Plan shall be deemed authorized and approved in all respects, and, to the extent taken prior to the

Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, managing-members, limited or general partners, or officers of the Debtors, the Wind-Down Debtor, or any other Entity.

103. All matters provided for in the Plan involving the corporate structure of the Debtors or the Wind-Down Debtor, as applicable, and any corporate action required by the Debtors or the Wind-Down Debtor, as applicable, in connection with the Plan shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Wind-Down Debtor, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Wind-Down Debtor, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Wind-Down Debtor, and any and all other agreements, documents, and instruments relating to the foregoing. The authorizations and approvals contemplated by Article IV.J of the Plan shall be effective notwithstanding any requirements under non-bankruptcy law.

104. As soon as practicable after the Effective Date, the Wind-Down Debtor shall take such actions as the Wind-Down Debtor may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Wind-Down Debtor on behalf of any Wind-Down Debtor without need for any action or approval by the shareholders or board of directors or managers of such Debtor. On and after the Effective Date, the Debtors or the Wind-Down Debtor (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously



conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to the Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. Pursuant to the terms of the Plan, any Money Transmitter Licenses that have not been terminated shall be deemed withdrawn and no further action is required to be taken by the Debtors or the Wind-Down Debtor to effectuate such withdrawal; *provided* that, following the Effective Date, the Debtors or the Wind-Down Debtor, as applicable, shall use commercially reasonable efforts to comply with all state banking department requirements for the surrender of a Money Transmitter License. Notwithstanding such Debtors' dissolution, such Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

105. **Binding Effect.** Upon the occurrence of the Effective Date, the terms of the Plan are immediately effective and enforceable and deemed binding on the Debtors, the Wind-Down Debtor, any and all Holders of Claims or Interests (regardless of whether such Holders of Claims or Interests have, or are deemed to have, accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or this Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

106. Pursuant to section 1141 of the Bankruptcy Code, subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Confirmation Order, all prior orders

entered in these Chapter 11 Cases and all documents and agreements executed by the Debtors as authorized and directed thereunder as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors, the Purchaser, or the Wind-Down Debtor, as applicable, and their respective successors and assigns.

107. **Vesting of Assets.** Except as otherwise provided in the Plan, this Confirmation Order, the Asset Purchase Agreement, the Schedule of Retained Causes of Action, or in any agreement, instrument, or other documented incorporated herein or therein, or in any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, notwithstanding any prohibition of assignability under applicable non-bankruptcy law and in accordance with section 1141 of the Bankruptcy Code, on the Effective Date, all property constituting Wind-Down Debtor Assets, including all Vested Causes of Action of the Debtors (unless otherwise released, waived, compromised, settled, satisfied, or transferred pursuant to the Plan) shall vest in the Wind-Down Debtor, free and clear of all Liens, Claims, charges, or other encumbrances.

108. Prior to the Effective Date, any and all of the Debtors' assets shall remain assets of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and on the Effective Date the Wind-Down Debtor Assets shall, subject to the Plan Administrator Agreement, be transferred to and vest in the Wind-Down Debtor. For the avoidance of doubt, to the extent not otherwise waived in writing, released, settled, compromised, assigned, or sold pursuant to a prior order or the Plan, the Plan Administrator specifically retains and reserves the right to assert, after the Effective Date, any and all of the Vested Causes of Action and related rights, whether or not asserted as of the Effective Date, and all proceeds of the foregoing, subject to the terms of the Plan, including without limitation Article IV.F.

109. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, only the Wind-Down Debtor and the Plan Administrator shall have the right to pursue or not to pursue, or, subject to the terms hereof and the Plan Administrator Agreement, compromise or settle any Wind-Down Debtor Assets transferred to the Wind-Down Debtor. On and after the Effective Date, the Wind-Down Debtor and the Plan Administrator may, without further Court approval, commence, litigate, and settle any Vested Causes of Action or Claims relating to any Wind-Down Debtor Assets transferred to the Wind-Down Debtor or rights to payment or Claims that belong to the Debtors as of the Effective Date or are instituted by the Wind-Down Debtor and Plan Administrator on or after the Effective Date, except as otherwise expressly provided herein and in the Plan Administrator Agreement. The Wind-Down Debtor shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code.

110. Notwithstanding any prohibition on assignability under applicable non-bankruptcy law, on the Effective Date and thereafter if additional Wind-Down Debtor Assets become available, the Debtors shall be deemed, subject to the Plan Administrator Agreement, to have automatically transferred to the applicable Wind-Down Debtor all of their right, title, and interest in and to all of the Wind-Down Debtor Assets, in accordance with section 1141 of the Bankruptcy Code. All such assets shall automatically vest in the Wind-Down Debtor free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims and Interests as set forth in the Plan and the expenses of the Wind-Down Debtor as set forth in the Plan and in the Plan Administrator Agreement. Thereupon, the Debtors shall have no interest in or with respect to the Wind-Down Debtor Assets or the Wind-Down Debtor.

111. On the Effective Date, the Debtors or Plan Administrator, as applicable, may establish one or more accounts or funds to hold and dispose of certain assets, pursue certain litigation (including the Vested Causes of Action), and/or satisfy certain Claims (including Claims that are contingent or have not yet been Allowed). For any such account or fund, the Debtors or the Plan Administrator, as applicable, may take the position that grantor trust treatment applies in whole or in part. To the extent such treatment applies to any such account or fund, for all U.S. federal income tax purposes, the beneficiaries of any such account or fund would be treated as grantors and owners thereof, and it is intended, to the extent reasonably practicable, that any such account or fund would be classified as a liquidating trust under section 301.7701-4 of the Treasury Regulations. Alternatively, any such account or fund may be subject to the tax rules that apply to “disputed ownership funds” under 26 C.F.R. 1.468B-9. If such rules apply, such assets would be subject to entity-level taxation, and the Debtors and Plan Administrator would be required to comply with the relevant rules.

112. **Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Sale Transaction or the Liquidation Transaction, as applicable, are hereby effective and authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to, or order of the Court, or further action by the respective officers, directors, managers, members, or equity holders of the Debtors or the Wind-Down Debtor and with the effect that such actions had been taken by unanimous action of such officers, directors, managers, members, or equity holders.

113. **Cancellation of Notes, Instruments, Certificates, and Other Documents.** On the later of the Effective Date and the date on which distributions are made pursuant to the Plan (if not made on the Effective Date), except for the purpose of evidencing a right to and allowing

Holders of Claims and Interests to receive a distribution under the Plan or to the extent otherwise specifically provided for in the Plan, this Confirmation Order, or any agreement, instrument, or other document entered into in connection with or pursuant to the Plan or the Restructuring Transactions, all notes, bonds, indentures, certificates, Securities, shares, purchase rights, options, warrants, collateral agreements, subordination agreements, intercreditor agreements, or other instruments or documents directly or indirectly evidencing, creating, or relating to any indebtedness or obligations of, or ownership interest in, the Debtors, giving rise to any Claims against or Interests in the Debtors or to any rights or obligations relating to any Claims against or Interests in the Debtors shall be deemed cancelled without any need for a Holder to take further action with respect thereto.

114. For the avoidance of doubt, cancellation of Existing Equity Interests pursuant to the Plan shall not affect the rights of the Holders of Existing Equity Interests to receive distributions, if any, under the Plan on account of such Existing Equity Interests. Holders of Existing Equity Interests shall continue to possess all rights, powers, privileges, and standing associated with such Existing Equity Interests as if those Existing Equity Interests continue to exist subject to the terms of the Plan and this Confirmation Order.

115. **Distributions.** The procedures governing distributions contained in Article VI of the Plan shall be, and hereby are, approved in their entirety. Except as otherwise set forth in the Plan or this Confirmation Order, the Plan Administrator shall make all distributions required under the Plan and the timing of distributions required under the Plan or this Confirmation Order shall be made in accordance with and as set forth in the Plan, this Confirmation Order, or the Plan Administrator Agreement, as applicable; *provided* that, if a creditor does not timely provide the Plan Administrator with its taxpayer identification number in the manner and by the deadline

established by the Plan Administrator and/or the Plan, the creditor shall be deemed to have forfeited its right to any current, reserved or future distributions provided for under the Plan and such creditor's Claim or Interest shall be disallowed and expunged without further order of the Court. Any such forfeited distribution shall be deemed to have reverted back to the Wind-Down Debtor for all purposes, including for distributions to other holders of Allowed Claims or Allowed Interests (as applicable) against the particular Debtor in respect of which the forfeited distribution was made, notwithstanding any federal, provincial or state escheat, abandoned or unclaimed property law to the contrary.

116. **Claims Register.** Any Claim or Interest that has been paid, satisfied, amended, superseded, cancelled, or otherwise expunged (including pursuant to the Plan) may be adjusted or expunged, as applicable, on the Claims Register at the direction of the Debtors or Wind-Down Debtor without the Debtors or Wind-Down Debtor having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Court.

117. **Preservation of Rights of Action.** In accordance with section 1123(b) of the Bankruptcy Code, the Wind-Down Debtor shall succeed to all rights to commence and pursue any and all Vested Causes of Action of the Debtors, whether arising before or after the Petition Date, including, without limitation, any actions specifically enumerated in the Schedule of Retained Causes of Action other than Causes of Action released, waived, settled, compromised, or transferred. Such rights shall be preserved by the Debtors and Wind-Down Debtor and shall vest in the Wind-Down Debtor, with the Wind-Down Debtor's rights to commence, prosecute, or settle such Causes of Action preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action expressly released, waived, settled, compromised, or transferred by the



Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan or pursuant to the Asset Purchase Agreement, which shall be deemed released and waived by the Debtors and the Wind-Down Debtor as of the Effective Date.

118. The Wind-Down Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the beneficiaries of the Wind-Down Debtor and in accordance with the Plan Administrator Agreement and the Plan. No Entity may rely on the absence of a specific reference in the Schedules of Assets and Liabilities or Statement of Financial Affairs, the Plan, the Plan Supplement, the Disclosure Statement, or the Schedule of Retained Causes of Action to any Cause of Action against it as any indication that the Debtors or the Wind-Down Debtor will not pursue any and all available Causes of Action against it. The Wind-Down Debtor, on behalf of the Debtors and the Wind-Down Debtor, expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise provided in the Plan, including Article VIII of the Plan. Unless any Cause of Action of the Debtors is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or pursuant to a Final Order, the Wind-Down Debtor, on behalf of the Debtors and Wind-Down Debtor and in accordance with the Plan Administrator Agreement, expressly reserves all such Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation.

119. The Wind-Down Debtor, on behalf of the Debtors and the Wind-Down Debtor, reserves and shall retain such Causes of Action of the Debtors notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause

of Action that a Debtor may hold against any Entity shall vest in the Wind-Down Debtor, except as otherwise provided in the Plan, including Article VIII of the Plan. The Wind-Down Debtor, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Wind-Down Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Court in accordance with the Plan.

120. **Subordination.** Except as expressly provided in the Plan, the allowance, classification, and treatment of all Allowed Claims against and Allowed Interests in the Debtors and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Wind-Down Debtor reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

121. **Release of Liens.** Except as otherwise provided in the Plan, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan or this Confirmation Order on the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, and all of the right, title, and interest of any holder of such mortgages, deeds of

trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or Wind-Down Debtor, as applicable, and their successors and assigns, in each case, without any further approval or order of the Court and without any action or Filing being required to be made by the Debtors. The presentation or filing of this Confirmation Order to or with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

122. **Governance of the Wind-Down Debtor.** The Plan Administrator shall appoint an independent director at each Debtor to act as a fiduciary for such Debtor entity in connection with the resolution of the Intercompany Claims.

123. **Intercompany Claims.** For the avoidance of doubt, nothing in this Confirmation Order or the Plan shall have any impact on the validity, extent, priority, or treatment of the Intercompany Claims. Any determination as to the validity, extent, priority, or treatment of the Intercompany Claims shall be determined by the Court in a separate matter on proper notice to parties in interest. Notwithstanding anything to the contrary in this Confirmation Order or the Plan, the rights of the ad hoc group of equityholders (the “AHG”) to continue or participate in any adjudication of the Intercompany Claims are preserved, and any party reserves any and all rights, claims, and defenses in connection therewith, including without limitation, the Debtors and/or the Wind-Down Debtor’s right to challenge the AHG’s standing with respect thereto; *provided that* such right, claim, or defense is not based on any provision in this Confirmation Order or the Plan.

124. **FTX Settlement.** Pursuant to the terms of the FTX Settlement, the Debtors shall reserve and hold the amount of \$445 million in Cash on account of the Preference Claims (as defined in the FTX Settlement) asserted by FTX, Alameda, and their estates in the FTX

Bankruptcy Proceeding, subject to all defenses and counterclaims thereto, until the final resolution of the Preference Claims by settlement or a final and unappealable order by the court in the FTX Bankruptcy Proceeding, including any appeals therefrom.

125. **General Settlement of Claims and Interests.** As discussed in detail in the Disclosure Statement and as otherwise provided in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of this Confirmation Order shall constitute the Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as well as a finding by the Court that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

126. **Third-Party Releases.** For the avoidance of doubt, any party that did not affirmatively "opt in" to the Third-Party Releases contained in the Plan shall not be deemed to grant such Third-Party Releases contained in the Plan.

127. **Contributed Third Party Claims.** For the avoidance of doubt, any party that did not affirmatively "opt in" to contribute their Contributed Third-Party Claims to the Wind-Down

Debtor shall not be deemed to contribute their claims to the Wind-Down Debtor; *provided, however,* that any party may contribute their Contributed Third-Party Claims to the Wind-Down Debtor on or after the Effective Date by separate agreement with the Plan Administrator and Wind-Down Debtor. Any such agreement shall be valid to the same extent as if the party affirmatively opted in to contribute their Contributed Third-Party Claims to the Wind-Down Debtor.

128. **Operations After Closing.** On and after the Effective Date, except as otherwise provided in the Plan, the Debtors or the Wind-Down Debtor may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

129. **Assumption and Rejection of Executory Contracts and Unexpired Leases.** On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (a) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (b) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (c) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (d) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (e) is a D&O Liability Insurance Policy other than the Side-A Policy. Entry of this Confirmation Order constitutes approval of such assumptions, assignments, and rejections,

including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Except as otherwise provided in this Confirmation Order, any and all objections or reservations of rights in connection with the rejection of an Executory Contract or Unexpired Lease under the Plan, if any, are overruled on their merits.

130. **Waiver or Estoppel.** Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed prior to the Confirmation Date.

131. **Insurance Policies and Surety Bonds.** Each D&O Liability Insurance Policy (including, without limitation, any “tail policy” and all agreements, documents, or instruments related thereto) other than the Side-A Policy shall be assumed, in their entirety, without the need for any further notice to or action, order, or approval of the Court, as of the Effective Date, pursuant to sections 105 and 365 of the Bankruptcy Code with the Wind-Down Debtor being authorized to pursue any proceeds thereof on behalf of the Debtors or the Wind-Down Debtor. The Side-A Policy shall remain in effect during these Chapter 11 Cases with the Debtors, and the Wind-Down Debtor preserves all avoidance and other actions in connection with the premium paid thereunder. All beneficiaries under the D&O Insurance Policies reserve their rights under such D&O Insurance Policies subject to the limitations set forth in the Plan.

132. The Debtors or the Wind-Down Debtor, as applicable, shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policy (including, without



limitation, any “tail policy” and all agreements, documents, or instruments related thereto) in effect prior to the Effective Date, and subject in all respects to the D&O Settlement, any current and former directors, officers, managers, and employees of the Debtors who served in such capacity at any time before or after the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy subject to the terms thereof regardless of whether such directors, officers, managers, and employees remain in such positions after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Debtors or the Wind-Down Debtor shall retain the ability to supplement such D&O Liability Insurance Policy as the Debtors or Wind-Down Debtor may deem necessary, subject to the prior written consent of the Wind-Down Debtor.

133. The Debtors shall continue to satisfy their obligations under their insurance policies in full and continue such programs in the ordinary course of business. Each of the Debtors’ insurance policies, and any agreements, documents, or instruments relating thereto shall be treated as Executory Contracts under the Plan. On the Effective Date: (a) the Debtors shall be deemed to have assumed all such insurance policies and any agreements, documents, and instruments relating thereto in their entirety and (b) such insurance policies and any agreements, documents, or instruments relating thereto shall revert in the applicable Wind-Down Debtor(s) unaltered.

134. **Authorization to Consummate.** The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to consummation as set forth in Article IX of the Plan.

135. **Professional Compensation.** All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than sixty (60) days after the Effective Date. The Court shall determine

the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules. The Wind-Down Debtor shall pay Professional Fee Claims in Cash to such Professionals in the amount the Court allows, including from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by entry of an order of the Court; *provided* that the Debtors' and the Wind-Down Debtor's obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account.

136. No later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. No funds held in the Professional Fee Escrow Account shall be property of the Estates of the Debtors or the Wind-Down Debtor. When all Professional Fee Claims Allowed by the Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Court, any remaining funds held in the Professional Fee Escrow Account shall be turned over to the Wind-Down Debtor without any further notice to or action, order, or approval of the Court or any other Entity.

137. The Professionals shall deliver to the Debtors a reasonable and good-faith estimate of their unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, and shall

deliver such estimate no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Fee Claims Filed with the Court, and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated to be outstanding as of the anticipated Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account; provided that the Wind-Down Debtor shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

138. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors and/or the Wind-Down Debtor, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Wind-Down Debtor. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtor may employ and pay any Professional in the ordinary course of business for the period after the Confirmation Date without any further notice to or action, order, or approval of the Court.

139. **Return of Deposits.** All utilities, including, but not limited to, any Person or Entity that received a deposit or other form of adequate assurance of performance under section 366 of

the Bankruptcy Code during these Chapter 11 Cases, must return such deposit or other form of adequate assurance of performance to the Wind-Down Debtor promptly following the occurrence of the Effective Date, if not returned or applied earlier.

140. **Release, Exculpation, and Injunction Provisions.** The release, exculpation, injunction, opt in, and related provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all Persons and Entities to the extent provided therein except as otherwise provided in this Confirmation Order, *provided, however*, that nothing in the exculpation related provisions of the Plan shall release the Debtors from the provisions of the Plan governing satisfaction of Allowed Claims including Allowed Administrative Expense Claims or change the standard for liability on Allowed Claims or Allowed Administrative Expense Claims, subject to any applicable bankruptcy and non-bankruptcy law.

141. **Governmental Units.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States or any of its agencies arising under the Internal Revenue Code, the environmental laws or any civil or criminal laws of the United States, or under any rules or regulations enforced by the United States or any of its agencies against the Released Parties, nor shall anything in the Confirmation Order or the Plan enjoin the United States from bringing any claim, suit, action or other proceedings against the Released Parties for any liability for any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any civil or criminal laws of the United States, or under any rules or regulations enforced by the United States or any of its agencies, nor shall anything in the Confirmation Order or the Plan exculpate any such party from any liability to the United States or any of its agencies, arising under the Internal Revenue Code, the environmental laws or any civil or criminal laws of the United States, or under any rules or regulations enforced by the United States or any of its agencies; *provided*,

however, that nothing in this Confirmation Order or the Plan shall modify in any respect the relief previously granted in the Bar Date Order and thus no person or entity, including the United States or any of its agencies, can seek or receive a direct or indirect distribution of any property of the Debtors' estates unless they filed a Proof of Claim prior to the Governmental Bar Date.

142. **Securities and Exchange Commission Provisions.** Notwithstanding anything to the contrary in this Confirmation Order, or any findings announced at the Combined Hearing, nothing in this Confirmation Order, or announced at the Combined Hearing, constitutes a finding under the federal securities laws as to whether crypto tokens or transactions involving crypto tokens are securities, and the right of the SEC to challenge transactions involving crypto tokens on any basis is expressly reserved.

143. Notwithstanding any provision herein to the contrary, nothing in this Confirmation Order or the Plan grants this Court with jurisdiction over any police and regulatory actions by the SEC, and the SEC shall retain the power and authority to commence and continue any such actions against any person or entity, including without limitation, the Debtors, in any forum with jurisdiction; *provided*, however, that nothing in this Confirmation Order or the Plan shall modify in any respect the relief previously granted in the Bar Date Order and thus no person or entity, including the United States or any of its agencies, can seek or receive a direct or indirect distribution of any property of the Debtors' estates unless they filed a Proof of Claim prior to the Governmental Bar Date.

144. Upon the occurrence of the Effective Date, the Debtors' books and records shall be transferred to the Wind-Down Debtor, which shall continue to preserve all financial books and records, emails, and other financial documents relating to the Debtors' business that are currently in the Debtors' possession. The Wind-Down Debtor shall not destroy or otherwise abandon any

such documents or records without providing advance notice to the SEC (c/o Therese Scheuer, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, ScheuerT@SEC.GOV) and seeking further authorization from this Court. Nothing in the Plan or this Confirmation Order shall affect the obligations of the pre-Effective Date Debtors, the Wind-Down Debtor, and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

145. Notwithstanding any language to the contrary herein, no provision in the Plan or this Confirmation Order shall (a) preclude the OSC or the SEC from enforcing its police or regulatory powers or (b) enjoin, limit, impair or delay the OSC or SEC from commencing or continuing any claims, causes of action, proceeding, or investigations against any non-Debtor person or non-Debtor entity in any forum.

146. **Employee Transition Plan.** The Employee Transition Plan, the terms of which are included in the Plan Supplement as Exhibit H, will be implemented following the Effective Date and is not subject to the Court's approval.

147. **Compliance with Tax Requirements.** In connection with the Plan, to the extent applicable, the Debtors, the Wind-Down Debtor, any Distribution Agent, and any other applicable withholding and reporting agents shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including winding-down



a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms that are reasonable and appropriate; *provided* that the Wind-Down Debtor and the Distribution Agent, as applicable, shall request appropriate documentation from the applicable distributees and allow such distributees a reasonable amount of time to respond. The Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

148. **Exemption from Certain Taxes and Fees.** To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Debtor, the Wind-Down Debtor, the Purchaser, or to any other Entity) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Wind-Down Debtor; (b) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; or (d) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, including the Asset Purchase Agreement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee,

or other similar tax or governmental assessment, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

149. **Termination of Asset Purchase Agreement.** If the Asset Purchase Agreement is terminated and the Sale Transaction is not consummated, all provisions in this Confirmation Order relating to the Asset Purchase Agreement, the Sale Transaction, and the Purchaser shall be of no force and effect, and the Debtors are authorized to consummate the Liquidation Transaction without further order of the Court.

150. **The Liquidation Transaction.** If the Asset Purchase Agreement is terminated, the Debtors shall pursue the Liquidation Transaction contemplated under the Plan and shall provide all Holders of Claims and Interests with the treatment afforded to such Holders under the Plan. In the event that the Debtors determine to pursue the Liquidation Transaction contemplated under Article IV of the Plan, the Debtors shall promptly notify the Court and all parties in interest. The Plan shall be deemed to satisfy all requirements under the Bankruptcy Code with respect to either the Sale Transaction or the Liquidation Transaction pursuant to this Confirmation Order.

151. **Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents,

mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring Transactions, and this Confirmation Order.

152. **The BNY Objection.** This Confirmation Order confirms that the Deed of Trust and Assignment of Rents recorded January 5, 2023 Official Records of Orange County (the “Deed”) transferring title of 37 Black Hawk, Irvine, California 92603 (the “Property”) from Michael G. Beason and Mickey L. Wiebeis (collectively, the “Property Borrowers”) to Voyager Digital, LLC is void. This Confirmation Order may be recorded against the Property as evidence and confirmation that the Deed is void. The Bank Of New York Mellon f/k/a the Bank Of New York, As Trustee For The Certificateholders Of CWALT, Inc., Alternative Loan Trust 2005-38, Mortgage Pass-Through Certificates, Series 2005-38 as Serviced by Shellpoint Mortgage Servicing (“Shellpoint”) shall be permitted to take any other the necessary actions to void the Deed. To the extent necessary, the automatic stay is lifted solely as it pertains to Shellpoint’s rights to take action against the Property and shall be effective immediately upon entry of this Confirmation Order. The Debtor(s) shall not be party to any foreclosure or other proceeding related to the Property as they lack any interest in the Property. Shellpoint shall release the Debtors and the Wind-Down Debtor of any costs and claims incurred on account of the Property, including any actions taken in any foreclosure or other proceeding or associated with voiding the Deed. This Confirmation Order shall in no way prevent Shellpoint from pursuing any and all lawful rights and remedies as to the Property Borrowers.

153. **Continued Effect of Stays and Injunction.** Unless otherwise provided in the Plan or this Confirmation Order, all injunctions or stays arising under or entered during these Chapter 11 Cases under section 362 of the Bankruptcy Code or otherwise and in existence on the

Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

154. **Non-Severability.** Each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' consent, consistent with the terms set forth herein; and (c) non-severable and mutually dependent.

155. **Notice of Subsequent Pleadings.** Except as otherwise provided in the Plan or in this Confirmation Order, notice of all subsequent pleadings in these Chapter 11 Cases after the Effective Date will be limited to the following parties: (a) the Wind-Down Debtor and its counsel; (b) the U.S. Trustee; (c) counsel to the Purchaser; (d) any party known to be directly affected by the relief sought by such pleadings; and (e) any party that specifically requests additional notice in writing to the Debtors, the Wind-Down Debtor, or the Plan Administrator, as applicable, or files a request for notice under Bankruptcy Rule 2002 after the Effective Date. The Notice and Claims Agent shall not be required to file updated service lists.

156. **Post-Confirmation Modifications.** Subject to the limitations and terms contained in the Plan and Purchaser's consent rights under the Asset Purchase Agreement, the Debtors, with the consent of the Committee, reserve the right to (a) amend or modify the Plan before the entry of this Confirmation Order, in accordance with the Bankruptcy Code and the Bankruptcy Rules and (b) after the entry of this Confirmation Order, the Debtors or the Wind-Down Debtor, as applicable, may, upon order of the Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth in the Plan.

157. **Plan Classification Controlling.** The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of the distributions to be made thereunder and the classifications set forth on the ballots tendered to or returned by the Holders of Claims or Interests in connection with voting on the Plan: (a) were set forth thereon solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of Claims and Interests under the Plan for distribution purposes; (c) may not be relied upon by any Holder of a Claim or Interest as representing the actual classification of such Claim or Interest under the Plan for distribution purposes; and (d) shall not be binding on the Debtors except for voting purposes.

158. **Choice of Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan and any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, documents, instruments, or contracts, in which case the governing law of such agreement shall control); provided that corporate, limited liability company, or partnership governance matters relating to the Debtors or the Wind-Down Debtor, as applicable, shall be governed by the laws of the jurisdiction of incorporation or formation of the relevant Debtor or Wind-Down Debtor, as applicable.

159. **Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

160. **Waiver of Filings.** Any requirement under section 521 of the Bankruptcy Code or Bankruptcy Rule 1007 obligating the Debtors to file any list, schedule, or statement with the Court or the Office of the U.S. Trustee is permanently waived as to any such list, schedule, or statement not filed as of the Confirmation Date.

161. **Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state, federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement. As provided in section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license of the Debtors or Wind-Down Debtor on account of the filing or pendency of the Chapter 11 Cases.

162. **Protection Against Discriminatory Treatment.** As provided by section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Entity, including Governmental Units, shall discriminate against any Wind-Down Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, any Wind-Down Debtor, or any Entity with which a Wind-Down Debtor has been or is associated, solely because such Wind-Down Debtor was a debtor under chapter 11 of the Bankruptcy Code or may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases).



163. **Notices of Confirmation and Effective Date.** The Debtors or the Wind-Down Debtor, as applicable, shall serve notice of entry of this Confirmation Order, of the occurrence of the Effective Date, and of applicable deadlines (the “Notice of Confirmation”) in accordance with Bankruptcy Rules 2002 and 3020(c) on all parties served with the Combined Hearing Notice seven Business Days after the Effective Date; *provided* that no notice of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed notice of the Combined Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address,” or “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity’s new address. For those parties receiving electronic service, filing on the docket is deemed sufficient to satisfy such service and notice requirements.

164. No later than ten Business Days after the Effective Date, the Wind-Down Debtor shall cause the Notice of Confirmation, modified for publication, to be published on one occasion in *The New York Times* (national edition) and *USA Today* (national edition). Mailing and publication of the Notice of Confirmation in the time and manner set forth in this paragraph will be good, adequate, and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c). No further notice is necessary.

165. The Notice of Confirmation will have the effect of an order of the Court, will constitute sufficient notice of the entry of this Confirmation Order to filing and recording officers, and will be a recordable instrument notwithstanding any contrary provision of applicable nonbankruptcy law. The above-referenced notices are adequate under the particular circumstances of these Chapter 11 Cases and no other or further notice is necessary.

166. **Dissolution of Statutory Committees.** On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases; *provided, however*, that such committees will remain in existence for the limited purposes of (a) pursuing, supporting, or otherwise participating in, any outstanding appeals in the Chapter 11 Cases; and (b) filing, objecting, or otherwise participating in, any final fee applications of Professionals.

167. **Exemption from Registration.** The Plan Administrator shall hold the equity of the Voyager Digital Ltd., to the extent that any new equity is issued, in an agency capacity, for the benefit of and to facilitate the rights of Holders of Interests provided under the Plan and any such equity shall not be deemed “securities” under applicable laws.

168. Distributions to Holders of Claims and Interests in accordance with the Plan shall not be deemed to be unlicensed money transmission or to violate any securities laws.

169. **Effect of Non-Occurrence of Conditions to Confirmation.** If the Effective Date does not occur within 120 days after the Confirmation Date, then the Plan will be null and void in all respects, any and all compromises or settlements not previously approved by Final Order of the Court embodied in the Plan (including with respect to the fixing, limiting, or treatment of any Claim or Interest), shall be deemed null and void, and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action held by any Debtor or any other Entity; (b) prejudice in any manner the rights of any Debtor or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity in any respect.

170. **Substantial Consummation.** On the Effective Date, the Plan shall be deemed to have been substantially consummated or shall be anticipated to be substantially consummated concurrent with the occurrence of the Effective Date.

171. **Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Court.

172. **Immediate Binding Effect.** Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Debtor, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, exculpations, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or Interest has voted on the Plan.

173. **References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by reference.

174. **Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

175. **Effect of Conflict.** This Confirmation Order supersedes any Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall govern and control.

176. **Final, Appealable Order.** This Confirmation Order is a final judgment, order, or decree for purposes of 28 U.S.C. § 158(a), and the period in which an appeal must be filed shall commence upon the entry hereof.

177. **Retention of Jurisdiction.** The Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including (i) the matters set forth in Article XI of the Plan and (ii) as set forth in Section 10.13 of the Asset Purchase Agreement.

New York, New York  
Dated: \_\_\_\_\_, 2023

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THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**The Plan**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC. <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**THIRD AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND  
ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Joshua A. Sussberg, P.C.  
Christopher Marcus, P.C.  
Christine A. Okike, P.C.  
Allyson B. Smith (admitted *pro hac vice*)  
KIRKLAND & ELLIS LLP  
KIRKLAND & ELLIS INTERNATIONAL LLP  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

**NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE,  
COMMITMENT, OR LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY  
OTHER PARTY IN INTEREST, AND THIS PLAN IS SUBJECT TO APPROVAL BY THE  
BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS. THIS PLAN IS NOT AN  
OFFER WITH RESPECT TO ANY SECURITIES.**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, LTD. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

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7. “*Account Holder*” means any Person or Entity who holds an Account with OpCo as of the Petition Date.

8. “*Account Holder Claim*” means any Claim against the Debtors that is held by an Account Holder on account of such Holder’s Account.

9. “*Acquired Assets*” has the meaning ascribed to it in the Asset Purchase Agreement.

10. “*Acquired Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

11. “*Acquired Coins Value*” has the meaning ascribed to it in the Asset Purchase Agreement.

12. “*Additional Bankruptcy Distribution*” has the meaning ascribed to it in the Asset Purchase Agreement.

13. “*Administrative Claim*” means a Claim against a Debtor for the costs and expenses of administration of the Chapter 11 Cases arising on or after the Petition Date and prior to the Effective Date pursuant to section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors’ business and (b) Allowed Professional Fee Claims.

14. “*Administrative Claims Bar Date*” means the deadline for Filing requests for payment of Administrative Claims (other than requests for payment of Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), which: (a) with respect to Administrative Claims other than Professional Fee Claims, shall be thirty days after the Effective Date; and (b) with respect to Professional Fee Claims, shall be forty-five days after the Effective Date.

15. “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code. With respect to any Person that is not a Debtor, the term “*Affiliate*” shall apply to such Person as if the Person were a Debtor.

16. “*Alameda*” means Alameda Ventures Ltd., along with its Affiliates and subsidiaries.

17. “*Alameda Claims*” means the claims or causes of action asserted or assertable by the Debtors against Alameda, whether in the FTX Bankruptcy Proceeding or otherwise.

18. “*Alameda Loan Agreement*” means that certain unsecured loan agreement, dated as of June 21, 2022, as amended, restated, amended and restated, modified, or supplemented from time to time, by and among HoldCo, as the borrower, TopCo, as the guarantor, and Alameda, as the lender thereto.

19. “*Alameda Loan Facility*” means that certain unsecured loan facility provided for under the Alameda Loan Agreement.

20. “*Alameda Loan Facility Claims*” means any Claim against any Debtor derived from, based upon, or arising under the Alameda Loan Agreement and any fees, costs, and expenses that are reimbursable by any Debtor pursuant to the Alameda Loan Agreement.

21. “*Alameda Recovery*” means the recovery, if any, of the Debtors from Alameda on account of the Alameda Claims.

22. “*Allowed*” means, with respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim or Interest that is evidenced by a Proof of Claim timely Filed by the Bar Date or a request for payment of Administrative Claim timely Filed by the Administrative Claims Bar Date (or for which Claim or Interest under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court a Proof of Claim or a request for payment of Administrative Claim is not or shall not be required to be Filed); (b) a Claim or Interest that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; (c) a Claim or Interest Allowed pursuant to the Plan, any stipulation approved by the Bankruptcy Court, any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or a Final Order of the Bankruptcy Court, or (d) a Claim or Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court; *provided* that, with respect to a Claim or Interest described in clauses (a) and (b) above, such Claim or Interest shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or if such an objection is so interposed, such Claim or Interest shall have been Allowed by a Final Order. Any Claim or Interest that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes. A Proof of Claim Filed after and subject to the Bar Date or a request for payment of an Administrative Claim Filed after and subject to the Administrative Claims Bar Date, as applicable, shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. “Allow” and “Allowing” shall have correlative meanings.

23. “*Asset Purchase Agreement*” means that certain asset purchase agreement dated as of December 18, 2022 by and between BAM Trading Services Inc. (d/b/a Binance.US) as Purchaser and Voyager Digital, LLC as Seller.

24. “*Assumed Liabilities*” has the meaning ascribed to it in the Asset Purchase Agreement.

25. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as now in effect or hereafter amended.

26. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Southern District of New York, or any other court having jurisdiction over the Chapter 11 Cases, including to the extent of the withdrawal of reference under section 157 of the Judicial Code, the United States District Court for the Southern District of New York.

27. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated by the United States Supreme Court under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

28. “*Bar Date*” means the applicable deadline by which Proofs of Claim must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.

29. “*Bar Date Order*” means the *Order (I) Setting Deadlines for Submitting Proofs of Claims, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof* [Docket No. 218].

30. “*Binance.US Platform*” has the meaning ascribed to it in the Asset Purchase Agreement.
31. “*Binance US*” means BAM Trading Services Inc. (d/b/a Binance.US).
32. “*Binance US Account*” means a customer account opened with the Purchaser by an Account Holder or a Holder of an Allowed OpCo General Unsecured Claim.
33. “*Business Day*” means any day, other than a Saturday, Sunday, or a “legal holiday” (as defined in Bankruptcy Rule 9006(a)).
34. “*Cash*” or “\$” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.
35. “*Causes of Action*” mean any action, Claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, Lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law in accordance with applicable law. For the avoidance of doubt, “*Causes of Action*” includes: (a) any right of setoff, counterclaim, or recoupment and any claim arising from any contract or for breach of duties imposed by law or in equity; (b) any claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, violation of local, state, federal, or foreign law, or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any right to object to or otherwise contest Claims or Interests; (d) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (e) any claim or defense, including fraud, mistake, duress, usury, and any other defenses set forth in section 558 of the Bankruptcy Code.
36. “*CCO*” means Evan Psaropoulos.
37. “*CEO*” means Stephen Ehrlich.
38. “*Certificate*” means any instrument evidencing a Claim or an Interest.
39. “*Chapter 11 Cases*” means (a) when used with reference to a particular Debtor, the case pending for that Debtor in the Bankruptcy Court under chapter 11 of the Bankruptcy Code and (b) when used with reference to all Debtors, the procedurally consolidated cases filed for the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.
40. “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.
41. “*Claims Objection Bar Date*” means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) (i) with respect to Administrative Claims (other than Professional Fee Claims and Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), sixty days after the Administrative Claims Bar Date or (ii) with respect to all other Claims (other than Professional Fee Claims), 180 days after the Effective Date and (b) such other period of limitation as may be specifically fixed by the Debtors or the Wind-Down Debtor, as applicable, as approved by an order of the Bankruptcy Court for objecting to such Claims.



42. “*Claims Register*” means the official register of Claims against and Interests in the Debtors maintained by the Clerk of the Bankruptcy Court or the Claims, Noticing, and Solicitation Agent.

43. “*Claims, Noticing, and Solicitation Agent*” means Bankruptcy Management Solutions, Inc. d/b/a Stretto, in its capacity as the claims, noticing, and solicitation agent in the Chapter 11 Cases for the Debtors and any successors appointed by an order of the Bankruptcy Court.

44. “*Class*” means a class of Claims against or Interests in the Debtors as set forth in Article III of the Plan in accordance with section 1122(a) of the Bankruptcy Code.

45. “*Committee*” means the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases.

46. “*Confirmation*” means the Bankruptcy Court’s entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

47. “*Confirmation Date*” means the date on which Confirmation occurs.

48. “*Confirmation Hearing*” means the hearing before the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code at which the Debtors will seek Confirmation of the Plan.

49. “*Confirmation Order*” has the meaning ascribed to it in the Asset Purchase Agreement.

50. “*Consummation*” means the occurrence of the Effective Date.

51. “*Contributed Third-Party Claims*” means all direct Causes of Action that any Contributing Claimant has against any Person (other than a Debtor) that had a direct relationship with the Debtors, their predecessors, or respective affiliates and that harmed such Contributing Claimant in the claimant’s capacity as a creditor of Voyager, including (a) all Causes of Action based on, arising out of, or related to the marketing, sale, and issuance of Cryptocurrency that at any point was held or offered on Voyager’s platform; (b) all Causes of Action based on, arising out of, or related to the alleged misrepresentation of any of the Debtors’ financial information, business operations, or related internal controls; and (c) all Causes of Action based on, arising out of, or related to any alleged failure to disclose, or actual or attempted cover up or obfuscation of, any of the Debtors’ conduct prior to the Petition Date; *provided, however*, that Contributed Third-Party Claims do not include (i) any derivative claims of the Debtors; (ii) any direct claims against the Released Parties; (iii) any direct Causes of Action that any Contributing Claimant has against Mark Cuban, Dallas Basketball Limited d/b/a Dallas Mavericks, the National Basketball Association, and any of their Related Parties; or (iv) any direct Causes of Action that any Contributing Claimant, in its capacity as an equity holder of Voyager Digital Ltd., has that are asserted in the currently filed complaint, dated as of July 6, 2022, in the Ontario Superior Court of Justice by Francine De Sousa, against Voyager Digital Ltd., Stephen Ehrlich, Philip Eytan, Evan Psaropoulos, Lewis Bateman, Krisztian Toth, Jennifer Ackart, Glenn Stevens, and Brian Brooks.

52. “*Contributing Claimants*” means any Holders of Claims or Interests that elect on their ballots or opt-in forms to contribute their Contributed Third-Party Claims to the Wind-Down Debtor.

53. “*Cryptocurrency*” means a digital currency or crypto asset in which transactions are verified and records maintained by a decentralized system using cryptography, rather than by a centralized authority, including stablecoins, digital coins and tokens, such as security tokens, utility tokens and governance tokens.



54. “Cure” or “Cure Claim” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s default under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

55. “Customer Onboarding Protocol” means the protocol describing the process of onboarding Account Holders and Holders of OpCo General Unsecured Claims onto the Binance.US Platform, the form of which shall be included in the Plan Supplement and filed no later than by February 8, 2023, and which shall be in a form acceptable to the Purchaser.

56. “D&O Carriers” means the insurance carriers of the D&O Liability Insurance Policies.

57. “D&O Liability Insurance Policies” means all unexpired insurance policies maintained by the Debtors, the Wind-Down Debtor, or the Estates as of the Effective Date that have been issued (or provide coverage) regarding directors’, managers’, officers’, members’, and trustees’ liability (including any “tail policy”), including but not limited to the Management Liability Policy, the Excess Policies, and the Side-A Policy, and all agreements, documents, or instruments relating thereto.

58. “D&O Settlement” means the settlement between the Debtors and CEO and CCO as set forth in Article IV.G of the Plan.

59. “Debtors” means, collectively, each of the following: Voyager Digital Holdings, Inc.; Voyager Digital Ltd.; and Voyager Digital, LLC.

60. “Definitive Documents” means: (a) the Plan (and any and all exhibits, annexes, and schedules thereto); (b) the Confirmation Order; (c) the Disclosure Statement and the other Solicitation Materials; (d) the Disclosure Statement Order; (e) all pleadings filed by the Debtors in connection with the Chapter 11 Cases (or related orders); (f) the Plan Supplement; (g) the Employee Transition Plan; (h) any new material employment, consulting, or similar agreements entered into between the Wind-Down Debtor and any of the Debtors’ employees, if any; (i) the Asset Purchase Agreement; (j) the Customer Onboarding Protocol; and (k) any and all other deeds, agreements, filings, notifications, pleadings, orders, certificates, letters, instruments or other documents reasonably desired or necessary to consummate and document the transactions contemplated by the Restructuring Transactions (including any exhibits, amendments, modifications, or supplements made from time to time thereto).

61. “Disclosure Statement” means the *Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, as may be amended, supplemented, or otherwise modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan.

62. “Disclosure Statement Order” means the order entered by the Bankruptcy Court approving the Disclosure Statement.

63. “Disputed” means a Claim or an Interest or any portion thereof: (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order; and (c) with respect to which a party in interest has Filed a Proof of Claim, a Proof of Interest, or otherwise made a written request to a Debtor for payment.

64. “Disputed Claims Reserve” means an appropriate reserve in an amount to be determined by the Wind-Down Debtor for distributions on account of Disputed Claims that are subsequently Allowed after the Effective Date, in accordance with Article VII.D hereof.

65. “*Distributable Cryptocurrency*” means all Cryptocurrency held on the Voyager platform or that is otherwise property of any Debtor on the Effective Date after payment in full of, or reserve for, all Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims.

66. “*Distributable HoldCo Cash*” means HoldCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at HoldCo in full; and (y) to fund HoldCo’s Pro Rata share of the Wind-Down Budget.

67. “*Distributable OpCo Cash*” means OpCo’s Cash, including the Purchase Price Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at OpCo in full; and (y) to fund OpCo’s Pro Rata share of the Wind-Down Budget.

68. “*Distributable TopCo Cash*” means TopCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at TopCo in full; and (y) to fund TopCo’s Pro Rata share of the Wind-Down Budget.

69. “*Distribution Agent*” means, as applicable, the Purchaser, the Debtors, the Wind-Down Debtor or any Entity or Entities designated by the Purchaser, the Debtors, or the Wind-Down Debtor to make or to facilitate distributions that are to be made pursuant to the Plan, Definitive Documents, and Asset Purchase Agreement.

70. “*Distribution Date*” means, except as otherwise set forth herein, the date or dates determined by the Debtors or the Wind-Down Debtor, on or after the Effective Date, upon which the Distribution Agent shall make distributions to Holders of Allowed Claims or Allowed Interests entitled to receive distributions under the Plan.

71. “*Distribution Record Date*” means the record date for purposes of determining which Holders of Allowed Claims and Interests against the Debtors are eligible to receive distributions under the Plan, which date shall be the Effective Date, or such other date as is determined by the Debtors or designated by an order of the Bankruptcy Court.

72. “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which (a) all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan, (b) no stay of the Confirmation Order is in effect, and (c) the Debtors declare the Plan effective.

73. “*Employee Transition Plan*” has the meaning set forth in Article IV.E of the Plan, and which shall be in form and substance reasonably acceptable to the Committee.

74. “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

75. “*Estate*” means, as to each Debtor, the estate created on the Petition Date for the Debtor in its Chapter 11 Case pursuant to sections 301 and 541 of the Bankruptcy Code and all property (as defined in section 541 of the Bankruptcy Code) acquired by the Debtor after the Petition Date through and including the Effective Date.

76. “*Excess Policies*” means, collectively, the Excess Insurance Policy, No. EFI1203041-01, issued by Euclid Financial on behalf of Certain Underwriters of Lloyd’s, London, the Excess Insurance Policy, No. RILED0A3392022, issued by Relm Insurance Ltd., both for the February 22, 2022 to

February 22, 2023 period, and the Excess Policy, No. ELU184180-23, issued by XL Specialty Insurance Company, for the February 22, 2022 to July 1, 2023 period.

77. “*Exculpated Parties*” means, collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) the Committee, and each of the members thereof, solely in their capacity as such; (c) each of the Released Professionals; (d) each of the Released Voyager Employees; and (e) the Distribution Agent.

78. “*Executory Contract*” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

79. “*Existing Equity Interests*” means any Interest in TopCo existing immediately prior to the occurrence of the Effective Date.

80. “*Extended Outside Date*” has the meaning set forth in the Asset Purchase Agreement.

81. “*Federal Judgment Rate*” means the federal judgment interest rate in effect as of the Petition Date calculated as set forth in section 1961 of the Judicial Code.

82. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing, respectively, in the Chapter 11 Cases with the Bankruptcy Court or its authorized designee, or, with respect to the filing of a Proof of Claim or Proof of Interest, file, filed, or filing, respectively, with the Claims, Noticing, and Solicitation Agent.

83. “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

84. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, petition for certiorari, or move for a new trial, reargument, reconsideration, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, reargument, reconsideration, or rehearing has been timely taken or filed, or as to which any appeal that has been or may be taken or any petition for certiorari or any motion for a new trial, reargument, reconsideration, or rehearing that has been or may be made or filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the motion for a new trial, reargument, reconsideration, or rehearing shall have been denied, resulted in no modification of such order (if any such motion has been or may be granted), or have otherwise been dismissed with prejudice; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure or any comparable Bankruptcy Rule may be filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

85. “*FTX*” means FTX Trading, Ltd. and any of its Affiliates or subsidiaries, including West Realm Shires Inc (d/b/a “FTX.US”).

86. “*FTX Bankruptcy Proceeding*” means that certain chapter 11 proceeding captioned *In re FTX Trading Ltd.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Nov. 11, 2022).

87. “*FTX Claims*” means the claims or causes of action asserted or assertable by the Debtors against FTX, whether in the FTX Bankruptcy Proceeding or otherwise.

88. “*FTX Recovery*” means the recovery, if any, of the Debtors from FTX on account of the FTX Claims.

89. “*FTX Settlement*” means the settlement between the Debtors, the Committee, FTX, Alameda, and the official committee of unsecured creditors in the FTX Bankruptcy Proceeding, pursuant to the terms set forth in the *Debtors’ Motion for Entry of an Order Approving the Joint Stipulation and Agreed Order Between the Voyager Debtors, the FTX Debtors, and Their Respective Official Committees of Unsecured Creditors* [Docket No. 1106].

90. “*General Unsecured Claim*” means, collectively, any HoldCo General Unsecured Claim, OpCo General Unsecured Claim, or TopCo General Unsecured Claim.

91. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

92. “*Government Bar Date*” means the applicable deadline by which Proofs of Claim by a Governmental Unit must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.

93. “*HoldCo*” means Voyager Digital Holdings, Inc.

94. “*HoldCo General Unsecured Claim*” means any Claim against HoldCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Alameda Loan Facility Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation, against HoldCo are HoldCo General Unsecured Claims.

95. “*Holder*” means an Entity holding a Claim against or an Interest in any Debtor.

96. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

97. “*Insurance Policies*” means any and all insurance policies entered into by the Debtors, including the D&O Insurance Policies.

98. “*Intercompany Claim*” means any Claim held by a Debtor or a Debtor’s Affiliate against a Debtor.

99. “*Intercompany Interest*” means, other than an Interest in Voyager, an Interest in one Debtor held by another Debtor or a Debtor’s Affiliate.

100. “*Interest*” means any equity security (as such term is defined in section 101(16) of the Bankruptcy Code) including all issued, unissued, authorized, or outstanding shares of capital stock and any other common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profit interests of an Entity, including all options, warrants, rights, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable, or exchangeable securities, or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in an Entity whether or not arising under or in connection with any employment agreement and whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security, and including any Claim against the Debtors subject to subordination pursuant to section 510(b) of the Bankruptcy Code arising from or related to the foregoing.

101. “*Interim Compensation Order*” means the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* [Docket No. 236].

102. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001 and the rules and regulations promulgated thereunder, as applicable to the Chapter 11 Cases.

103. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

104. “*Liquidation Procedures*” means, in the event the Sale Transaction is not consummated by the Outside Date, such procedures filed by the Wind-Down Debtor identifying the mechanics and procedures to effectuate the Liquidation Transaction.

105. “*Liquidation Transaction*” means, in the event the Sale Transaction is not consummated by the Outside Date, the distribution of the Debtors’ Cryptocurrency, Cash and other assets pursuant to Article IV.D of this Plan.

106. “*Management Liability Policy*” means the Executive and Corporate Securities Liability Insurance Policy, No. ELU181214-22, issued by XL Specialty Insurance Company for the February 22, 2022 to February 22, 2023 period.

107. “*Money Transmitter License*” means any consent, license, certificate, franchise, permission, variance, clearance, registration, qualification, authorization, waiver, exemption or other permit issued, granted, given or otherwise made available by or under the authority of any Governmental Unit pursuant to state money transmission or similar laws.

108. “*Net Owed Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

109. “*Non-Released D&O Claims*” has the meaning set forth in Article IV.F of the Plan.

110. “*Non-Released D&O Claim Budget*” means the amount allocated to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims, which amount shall be agreed upon between the Debtors and the Committee prior to the Confirmation Hearing.

111. “*Non-Released Insurance Claims*” has the meaning set forth in Article IV.F of the Plan.

112. “*OpCo*” means Voyager Digital, LLC.

113. “*OpCo General Unsecured Claim*” means any Claim against OpCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Account Holder Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation against OpCo are OpCo General Unsecured Claims.

114. “*OSC*” means the Ontario Securities Commission.

115. “*Other Priority Claim*” means any Claim against a Debtor, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.



116. “*Outside Date*” has the meaning set forth in the Asset Purchase Agreement. All references herein to the “*Outside Date*” shall be deemed to include the “*Extended Outside Date*” to the extent the *Outside Date* is extended in accordance with Section 8.1(c) of the Asset Purchase Agreement.

117. “*Person*” has the meaning set forth in section 101(41) of the Bankruptcy Code.

118. “*Petition Date*” means July 5, 2022.

119. “*Plan*” means this joint chapter 11 plan and all exhibits, supplements, appendices, and schedules hereto, as may be altered, amended, supplemented, or otherwise modified from time to time in accordance with Article X.A hereof, including the Plan Supplement (as altered, amended, supplemented, or otherwise modified from time to time), which is incorporated herein by reference and made part of the Plan as if set forth herein.

120. “*Plan Administrator*” means the Person or Persons selected by the Committee, after consultation with the Debtors, subject to the approval of the Bankruptcy Court and identified in the Plan Supplement, to serve as the administrator(s) of the Wind-Down Debtor, and any successor thereto, appointed pursuant to the Plan Administrator Agreement.

121. “*Plan Administrator Agreement*” means that certain agreement by and among the Debtors, the Committee, the Plan Administrator and the Wind-Down Debtor, which shall be included in the Plan Supplement in a form reasonably acceptable to the Committee.

122. “*Plan Supplement*” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may thereafter be amended, supplemented, or otherwise modified from time to time in accordance with the terms of the Plan, the Bankruptcy Code, the Bankruptcy Rules, and applicable law), to be Filed by the Debtors no later than seven days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court, and additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement. The Plan Supplement may include the following, as applicable: (a) the Schedule of Assumed Executory Contracts and Unexpired Leases; (b) the Schedule of Retained Causes of Action; (c) the Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases; (d) the Customer Onboarding Protocol; (e) the Restructuring Transactions Memorandum; (f) the Plan Administrator Agreement; (g) the Employee Transition Plan; and (h) any additional documents necessary to effectuate or that is contemplated by the Plan, including any compensation program for any of the Debtors’ employees to be established as contemplated in the Plan and the Definitive Documents to facilitate the transfer of Acquired Assets pursuant to the Asset Purchase Agreement and the wind-down of the Debtors’ Estates; *provided* that the Schedule of Retained Causes of Action shall be filed no later than 14 days before the Voting Deadline. The Plan Supplement (and the contents thereof) shall be (x) subject to Purchaser’s consent rights solely to the extent set forth under the Asset Purchase Agreement (and shall otherwise be consistent with the Asset Purchase Agreement) and (y) reasonably acceptable to the Committee.

123. “*Priority Tax Claim*” means any Claim of a Governmental Unit against a Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code.

124. “*Pro Rata*” means the proportion that (i) an Allowed Claim or an Allowed Interest in a particular Class bears to (ii) the aggregate amount of Allowed Claims or Allowed Interests in that Class and, solely with respect to Claims in Classes 3 and 4(a), the proportion that an Allowed Claim in either such Class bears to the aggregate amount of Allowed Claims in Classes 3 and 4(a) in the aggregate, unless otherwise indicated. For purposes of calculating Pro Rata distributions if the Sale Transaction is consummated by the *Outside Date*, the Pro Rata shares of all Holders of Allowed Claims or Allowed

Interests shall be calculated taking into account the Acquired Coins Value of the Net Owed Coins distributed to each of the Account Holders.

125. “*Professional*” means an Entity: (a) employed in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code or (b) for which compensation and reimbursement has been Allowed by Final Order of the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

126. “*Professional Fee Claim*” means any Administrative Claim by a Professional for compensation for services rendered or reimbursement of expenses incurred by such Professional through and including the Effective Date to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court. To the extent the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional’s requested fees and expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

127. “*Professional Fee Escrow Account*” means an escrow account funded by the Debtors with Cash no later than the Effective Date in an amount equal to the Professional Fee Escrow Amount.

128. “*Professional Fee Escrow Amount*” means the aggregate amount of quarterly U.S. Trustee fees, Professional Fee Claims, and other unpaid fees and expenses the Professionals have incurred or will incur in rendering services in connection with the Chapter 11 Cases prior to and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, which shall be estimated pursuant to the method set forth in Article II.B of the Plan.

129. “*Proof of Claim*” means a written proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

130. “*Proof of Interest*” means a written proof of Interest Filed against any of the Debtors in the Chapter 11 Cases.

131. “*Purchase Price Cash*” means the Cash paid by the Purchaser to OpCo pursuant to the Asset Purchase Agreement.

132. “*Purchaser*” means Binance US.

133. “*Reinstated*” or “*Reinstatement*” means, with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

134. “*Related Party*” means, with respect to any Entity, in each case in its capacity as such with respect to such Entity, such Entity’s current and former directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and advisors.

135. “*Released Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Committee, and each of the members thereof; (c) each of the Released Professionals; (d) Purchaser and each of its Related Parties; and (e) each of the Released Voyager Employees (subject to



the limitations contained in Article IV.F and Article IV.G of the Plan); *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Released Parties” under the Plan.

136. “*Released Professionals*” means the following professionals retained by the Debtors, the Committee, or the Purchaser (as applicable): (i) Kirkland & Ellis LLP; (ii) Moelis & Company LLC; (iii) Berkeley Research Group, LLC; (iv) Bankruptcy Management Solutions, Inc. d/b/a Stretto; (v) Quinn Emanuel Urquhart & Sullivan LLP; (vi) Fasken Martineau DuMoulin LLP; (vii) Campbells Legal (BVI); (viii) McDermott Will & Emery LLP; (ix) FTI Consulting, Inc.; (x) Epiq Corporate Restructuring, LLC; (xi) Cassels, Brock & Blackwell LLP; (xii) Paul Hastings LLP; (xiii) Harney Westwood & Riegels LP (BVI); (xiv) Day Pitney LLP (solely in their capacity as counsel to the Debtors); (xv) Jenner & Block LLP; (xvi) Seyfarth Shaw LLP; (xvii) Alvarez & Marsal Canada Inc.; (xviii) Blake, Cassels & Graydon LLP; (xix) Jaffe Raitt Heuer & Weiss; (xx) Latham & Watkins LLP; (xxi) Lowenstein Sandler LLP; (xxii) Kramer Levin LLP; and (xxiii) Acura Law Firm; *provided* that if the Asset Purchase Agreement is terminated, Latham & Watkins LLP shall not be a “Released Professional” under the Plan.

137. “*Released Voyager Employees*” means all directors, officers, and Persons employed by each of the Debtors and their Affiliates serving in such capacity on or after the Petition Date but before the Effective Date (subject to the limitations contained in Article IV.F and Article IV.G of the Plan).

138. “*Releasing Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Committee, and each of the members thereof; (c) each of the Released Professionals; (d) each of the Released Voyager Employees; (e) Purchaser and each of its Related Parties to the extent Purchaser is able to bind such Related Parties; (f) all Holders of Claims that vote to accept the Plan and affirmatively opt into the releases provided by the Plan; (g) all Holders of Claims that vote to reject the Plan and affirmatively opt into the releases provided by the Plan; and (h) all Holders of Claims or Interests that abstain from voting (or are otherwise not entitled to vote) on the Plan and affirmatively opt into the releases provided by the Plan; *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Releasing Parties” under the Plan.

139. “*Restructuring Transactions*” means those mergers, amalgamations, consolidations, reorganizations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions, or other corporate transactions that the Debtors and the Committee jointly determine to be necessary to implement the transactions described in this Plan, as described in more detail in Article IV.B herein and the Restructuring Transactions Memorandum.

140. “*Restructuring Transactions Memorandum*” means that certain memorandum as may be amended, supplemented, or otherwise modified from time to time, describing the steps to be carried out to effectuate the Restructuring Transactions, the form of which shall be included in the Plan Supplement, and which shall be in a form reasonably acceptable to the Committee.

141. “*Robertson Class Action*” means that certain putative class action litigation filed in the United States District Court for the Southern District of Florida, captioned *Robertson, et al. v. Cuban, et al.*, No. 1:22-cv-22538-RKA (S.D. Fla. Aug. 10, 2022).

142. “*Sale Transaction*” means the sale of certain of the Debtors’ assets and all other transactions pursuant to the Asset Purchase Agreement.

143. “*Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance acceptable to the Purchaser and in all respects consistent with the terms of the Asset Purchase Agreement, of certain

Executory Contracts and Unexpired Leases to be assumed by the Debtors and assigned to the Purchaser pursuant to the Plan and Asset Purchase Agreement, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Debtor, as applicable, in accordance with the Plan.

144. “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance reasonably acceptable to the Committee, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Debtor, as applicable, in accordance with the Plan.

145. “*Schedule of Retained Causes of Action*” means the schedule of certain Causes of Action of the Debtors that are not released, waived, settled, compromised, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors and/or the Wind-Down Debtor, which shall be included in the Plan Supplement. For the avoidance of doubt, any failure to specifically list any Causes of Action on the Schedule of Retained Causes of Action shall not be deemed a waiver or admission that any such Cause of Action does not constitute Vested Causes of Action.

146. “*Schedules*” means, collectively, the schedules of assets and liabilities, Schedule of Assumed Executory Contracts and Unexpired Leases, Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by each of the Debtors pursuant to section 521 of the Bankruptcy Code, as such schedules and statements may have been or may be amended, modified, or supplemented from time to time.

147. “*SEC*” means the United States Securities and Exchange Commission.

148. “*Section 510(b) Claim*” means any Claim against a Debtor subject to subordination under section 510(b) of the Bankruptcy Code.

149. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a secured Claim.

150. “*Secured Tax Claim*” means any Secured Claim against a Debtor that, absent its Secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

151. “*Securities Act*” means the U.S. Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

152. “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act.

153. “*Side-A Policy*” means the Cornerstone A-Side Management Liability Policy, ELU184179-22, issued by XL Specialty Insurance Company, for the July 1, 2022 to July 1, 2023 period.

154. “*Solicitation Materials*” means all solicitation materials with respect to the Plan.

155. “*Special Committee*” means the special committee established at OpCo, comprised of two independent directors, to conduct the Special Committee Investigation.

156. “*Special Committee Investigation*” means that certain investigation undertaken by the Special Committee into certain historical transactions, as more fully described in the Disclosure Statement.

157. “*Supported Jurisdiction*” has the meaning ascribed to it in the Asset Purchase Agreement.

158. “*TopCo*” means Voyager Digital Ltd., a Canadian corporation that is publicly traded on the Toronto Stock Exchange.

159. “*TopCo General Unsecured Claim*” means any Claim against TopCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Alameda Loan Facility Claim; (h) an Intercompany Claim; or (i) a Section 510(b) Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation, other than 510(b) Claims, against TopCo are TopCo General Unsecured Claims.

160. “*Transferred Creditors*” means Account Holders and Holders of Allowed OpCo General Unsecured Claims who have completed all documentation and “KYC” processes reasonably required by Purchaser in the ordinary course of Purchaser’s business with respect to similarly situated clients and who have opened a Binance US Account as of the date that is three (3) months following the later of the Closing Date (as defined in the Asset Purchase Agreement) or such later date as may be specified in the Customer Onboarding Protocol, and the successors and assigns of such Holders.

161. “*Transferred Cryptocurrency Value*” means the aggregate VWAP of any Cryptocurrency that is the subject of an Additional Bankruptcy Distribution as of the date that is two Business Days prior to such Additional Bankruptcy Distribution.

162. “*U.S. Trustee*” means the Office of the United States Trustee for Region 2.

163. “*Unclaimed Distribution*” means any distribution under the Plan on account of an Allowed Claim or Allowed Interest to a Holder that, after the expiration of six months after the Effective Date, has not: (a) accepted a distribution, (b) given notice to the Wind-Down Debtor of an intent to accept a particular distribution, (c) responded to the Debtors’ or Wind-Down Debtor’s requests for information necessary to facilitate a particular distribution, or (d) taken any other action necessary to facilitate such distribution.

164. “*Unexpired Lease*” means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or section 1123 of the Bankruptcy Code.

165. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

166. “*Unsupported Jurisdiction*” has the meaning ascribed to it in the Asset Purchase Agreement.

167. “*Unsupported Jurisdiction Approval*” has the meaning ascribed to it in the Asset Purchase Agreement.

168. “*Vested Causes of Action*” means the Causes of Action vesting in the Wind-Down Debtor pursuant to Article IV.L of the Plan, including, but not limited to, those Causes of Action enumerated on the Schedule of Retained Causes of Action, which shall be included in the Plan Supplement and in all respects consistent with the terms of the Asset Purchase Agreement.

169. “*VGX*” means Voyager Token, that certain Cryptocurrency issued by the Debtors.

170. “*Voting Deadline*” means February 22, 2023.

171. “*Voyager*” means Voyager Digital Ltd. and its direct and indirect Affiliates.

172. “*VWAP*” means, with respect to any type of Cryptocurrency and as of any date of determination, an amount equal to the volume weighted average price in U.S. dollars for such type of Cryptocurrency for the consecutive 24-hour period immediately prior to 8:00 a.m. New York Time on such date of determination, as reported on <https://coinmarketcap.com>.

173. “*Wind-Down Debtor*” means a Debtor, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date, and as described in Article IV.H to, among other things, effectuate the wind-down of the Debtors and the Wind-Down Debtor, commence, litigate and settle the Vested Causes of Action that are not released, waived, settled, compromised, or transferred under the Plan and make distributions pursuant to the terms of the Plan and the Plan Administrator Agreement; *provided* that, for the avoidance of doubt, the Wind-Down Debtor shall not conduct any business operations or continue the Debtors’ business operations after the Effective Date.

174. “*Wind-Down Debtor Assets*” means any assets of the Debtors transferred to, and vesting in, the Wind-Down Debtor pursuant to the Plan Administrator Agreement, which, in the event the Sale Transaction is consummated, shall exclude the Acquired Assets, and which shall include, without limitation but only to the extent the following are not Acquired Assets, (a) the Wind-Down Reserve, (b) the Net-Owed Coins to be distributed to Account Holders in Supported Jurisdictions until such Account Holders complete the Purchaser’s onboarding requirements in accordance with the Asset Purchase Agreement, (c) the Net-Owed Coins to be distributed to Account Holders in Unsupported Jurisdictions to the extent the Purchaser has not obtained the applicable Unsupported Jurisdiction Approval in accordance with Section 6.12 of the Asset Purchase Agreement, (d) any distributions to Account Holders or Holders of OpCo General Unsecured Claims that are returned to the Wind-Down Debtor pursuant to Section 6.12(e) of the Asset Purchase Agreement, (e) 3AC Claims and 3AC Recovery, (f) FTX Claims and FTX Recovery, (g) Alameda Claims and Alameda Recovery, (h) the Non-Released D&O Claims, and (i) the Vested Causes of Action.

175. “*Wind-Down Debtor Beneficiaries*” means the Holders of Allowed Claims or Allowed Interests that are entitled to receive distributions pursuant to the terms of the Plan, whether or not such Claims or Interests are Allowed as of the Effective Date.

176. “*Wind-Down Debtor Expenses*” means all actual and necessary costs and expenses incurred by the Wind-Down Debtor or Plan Administrator in connection with carrying out the obligations of the Wind-Down Debtor pursuant to the terms of the Plan and the Plan Administrator Agreement.

177. “*Wind-Down Debtor Oversight Committee*” means the oversight committee tasked with overseeing the Wind-Down Debtor in accordance with the Plan and the Plan Administrator Agreement.

178. “*Wind-Down Budget*” means the budget to fund the Wind-Down Debtor, which will be included in the Plan Supplement.

179. “*Wind-Down Reserve*” means the amount set forth in the Wind-Down Budget to fund the Wind-Down Debtor.

## **B. Rules of Interpretation**

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; (2) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form; (3) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (4) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed, shall mean that document, schedule, or exhibit, as it may thereafter have been or may thereafter be validly amended, amended and restated, supplemented, or otherwise modified; (5) unless otherwise specified, any reference to an Entity as a Holder of a Claim or Interest, includes that Entity’s successors and assigns; (6) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (7) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (8) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (12) references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (13) unless otherwise specified, all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases; (14) any effectuating provisions may be interpreted by the Debtors or the Wind-Down Debtor in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; (15) any references herein to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter; (16) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; (17) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable state limited liability company laws; and (18) the use of “include” or “including” is without limitation unless otherwise stated.

## **C. Computation of Time**

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

## **D. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving



effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan and any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, documents, instruments, or contracts, in which case the governing law of such agreement shall control); *provided* that corporate, limited liability company, or partnership governance matters relating to the Debtors or the Wind-Down Debtor, as applicable, shall be governed by the laws of the jurisdiction of incorporation or formation of the relevant Debtor or Wind-Down Debtor, as applicable.

**E. Reference to Monetary Figures**

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

**F. Reference to the Debtors or the Wind-Down Debtor**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Wind-Down Debtor mean the Debtors and the Wind-Down Debtor, as applicable, to the extent the context requires.

**G. Nonconsolidated Plan**

Although for purposes of administrative convenience and efficiency the Plan has been filed as a joint plan for each of the Debtors and presents together Classes of Claims against and Interests in the Debtors, the Plan does not provide for the substantive consolidation of any of the Debtors.

**ARTICLE II.**

**ADMINISTRATIVE AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

**A. Administrative Claims**

Except as otherwise provided in this Article II.A and except with respect to Administrative Claims that are Professional Fee Claims or subject to 11 U.S.C. § 503(b)(1)(D), unless previously Filed, requests for payment of Allowed Administrative Claims (other than Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code) must be Filed and served on the Wind-Down Debtor pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such Administrative Claims shall be deemed satisfied as of the Effective Date without the need for any objection from the Wind-Down Debtor or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity. Objections to such requests, if any, must be Filed and served on the Wind-Down Debtor and the requesting party by the Claims Objection Bar Date for Administrative Claims. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order of the Bankruptcy Court.

Except with respect to Administrative Claims that are Professional Fee Claims, and except to the extent that an Administrative Claim or Priority Tax Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Claim and the applicable Debtor(s) agree to less favorable treatment, each Holder of an Allowed Administrative Claim shall receive an amount of Cash equal to the amount of the unpaid or unsatisfied portion of such Allowed Administrative Claim in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Effective Date, no later than thirty (30) days after the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Wind-Down Debtor, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court. Any Cryptocurrency inadvertently deposited to the Debtors' account(s) after the Petition Date shall be returned to the sender in full.

Objections to requests for payment of such Administrative Claims, if any, must be Filed with the Bankruptcy Court and served on the Wind-Down Debtor and the requesting Holder no later than the Claims Objection Bar Date for Administrative Claims. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, an order that becomes a Final Order of the Bankruptcy Court.

## **B. Professional Fee Claims**

### **1. Final Fee Applications and Payment of Professional Fee Claims**

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than sixty (60) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules. The Wind-Down Debtor shall pay Professional Fee Claims in Cash to such Professionals in the amount the Bankruptcy Court allows, including from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court; *provided* that the Debtors' and the Wind-Down Debtor's obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account.

### **2. Professional Fee Escrow Account**

No later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and the U.S. Trustee and for no other Entities until all quarterly U.S. Trustee fees and all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the U.S. Trustee or to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. No funds held in the Professional Fee Escrow Account shall be property of the Estates of the Debtors or the Wind-Down Debtor. When all



Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, and all U.S. Trustee quarterly fees plus statutory interest, if any, have been paid in full, any remaining funds held in the Professional Fee Escrow Account shall be turned over to the Wind-Down Debtor without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

3. Professional Fee Escrow Amount

The Professionals shall deliver to the Debtors a reasonable and good-faith estimate of their unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, and shall deliver such estimate no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Fee Claims Filed with the Bankruptcy Court, and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated to be outstanding as of the anticipated Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account; *provided* that the Wind-Down Debtor shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

4. Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors and/or the Wind-Down Debtor, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Wind-Down Debtor. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtor may employ and pay any Professional in the ordinary course of business for the period after the Confirmation Date without any further notice to or action, order, or approval of the Bankruptcy Court.

For the avoidance of doubt, no Administrative Claims, Professional Fee Claims, or any other post-confirmation fees and expenses shall be paid prior to payment of any quarterly fees due and outstanding to the U.S. Trustee.

**C. Priority Tax Claims**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release, and in exchange for, each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

### ARTICLE III.

#### CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

##### A. Classification of Claims and Interests

Except for the Claims addressed in Article II of the Plan, all Claims against and Interests in the Debtors are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions pursuant to the Plan and in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

##### B. Summary of Classification

A summary of the classification of Claims against and Interests in each Debtor pursuant to the Plan is set forth in the following chart. The Plan constitutes a separate chapter 11 plan for each of the Debtors, and accordingly, the classification of Claims and Interests set forth below applies separately to each of the Debtors. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes, and such Claims or Interests shall be treated as set forth in Article III.E hereof. Voting tabulations for recording acceptances or rejections of the Plan will be conducted on a Debtor-by-Debtor basis as set forth above.<sup>1</sup>

Class	Claim or Interest	Status	Voting Rights
1	Secured Tax Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3	Account Holder Claims	Impaired	Entitled to Vote
4A	OpCo General Unsecured Claims	Impaired	Entitled to Vote
4B	HoldCo General Unsecured Claims	Impaired	Entitled to Vote
4C	TopCo General Unsecured Claims	Impaired	Entitled to Vote
5	Alameda Loan Facility Claims	Impaired	Not Entitled to Vote (Deemed to Reject)

<sup>1</sup> The Debtors reserve the right to separately classify Claims or Interests to the extent necessary to comply with any requirements under the Bankruptcy Code or applicable law.

Class	Claim or Interest	Status	Voting Rights
6	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
8	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
9	Existing Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

### C. Treatment of Classes of Claims and Interests

Subject to Article VI hereof, each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in exchange for such Holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors or Wind-Down Debtor, as applicable, and the Holder of such Allowed Claim or Allowed Interest, as applicable. In no event shall any Holder of a Claim receive more than such Holder's Allowed amount on account of such Claim.

#### 1. Class 1 — Secured Tax Claims

- (a) *Classification:* Class 1 consists of all Secured Tax Claims.
- (b) *Treatment:* Each Holder of an Allowed Secured Tax Claim shall receive, in full and final satisfaction of such Allowed Secured Tax Claim, at the option of the Wind-Down Debtor, payment in full in Cash of such Holder's Allowed Secured Tax Claim or such other treatment rendering such Holder's Allowed Secured Tax Claim Unimpaired.
- (c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Allowed Secured Tax Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Secured Tax Claims are not entitled to vote to accept or reject the Plan.

#### 2. Class 2 — Other Priority Claims

- (a) *Classification:* Class 2 consists of all Other Priority Claims.
- (b) *Treatment:* Each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction of such Allowed Other Priority Claim, at the option of the applicable Debtor, payment in full in Cash of such Holder's Allowed Other Priority Claim or such other treatment rendering such Holder's Allowed Other Priority Claim Unimpaired.
- (c) *Voting:* Class 2 is Unimpaired under the Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f)

of the Bankruptcy Code. Therefore, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 — Account Holder Claims

- (a) *Classification:* Class 3 consists of all Account Holder Claims.
- (b) *Allowance:* Account Holder Claims shall be conclusively Allowed in the amount listed on OpCos's *Amended Schedules of Assets and Liabilities* (Case No. 22-10945) [Docket No. 18]; *provided* that the rights of any Holder of an Account Holder Claim to object to the scheduled amount shall be preserved. To the extent an Account Holder Claim is Allowed in a greater amount than the scheduled amount of such Account Holder Claim, such Holder shall be entitled to a subsequent distribution such that it will receive its Pro Rata share of recoveries to Holders of Allowed Account Holder Claims. Account Holder Claims shall be valued in U.S. dollars as of the Petition Date consistent with section 502(b) of the Bankruptcy Code.
- (c) *Treatment:* Each Holder of an Allowed Account Holder Claim will receive in exchange for such Allowed Account Holder Claim:
  - (i) If the Sale Transaction is consummated by the Outside Date:
    - A. its Net Owed Coins, as provided in and subject to the requirements of Sections 6.10 and 6.12 of the Asset Purchase Agreement; *provided* that for Account Holders in Supported Jurisdictions who do not complete the Purchaser's onboarding requirements within three (3) months following the Closing Date and Account Holders in Unsupported Jurisdictions and only to the extent that the Purchaser does not obtain the Unsupported Jurisdiction Approval for the jurisdiction in which such Account Holder resides within 6 months following the Closing Date (as defined in the Asset Purchase Agreement), such Account Holders shall receive, after expiration of such time period, value in Cash at which such Net Owed Coins allocable to such Account Holder are liquidated;
    - B. its Pro Rata share of any Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;
    - C. its Pro Rata share of Distributable OpCo Cash; and
    - D. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed

Secured Tax Claims, and Allowed Other Priority Claims at OpCo;

*provided* that distributions made to any Account Holder pursuant to clauses (B), (C), and (D) above shall be made after taking into account the Acquired Coins Value of the Net Owed Coins or the value in Cash at which such Net Owed Coins are liquidated, as applicable, previously allocated to such Account Holder; or

(ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:

A. its Pro Rata share of Distributable OpCo Cash;

B. its Pro Rata share of Distributable Cryptocurrency, which such Account Holder shall be able to withdraw in kind, alternative Cryptocurrency, and/or Cash for a period of thirty (30) days after the Effective Date through the Voyager platform or, if elected by Seller pursuant to Section 6.12(d) of the Asset Purchase Agreement, through the Binance.US Platform; *provided* that if the applicable transfer is made through the Voyager platform and such Account Holder does not withdraw its Pro Rata share of Distributable Cryptocurrency available to such Account Holder from the Voyager platform within such thirty (30) day period, such Account Holder will receive Cash in the equivalent value to its Pro Rata share of Distributable Cryptocurrency; and

C. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at OpCo.

(d) *Voting:* Class 3 is Impaired under the Plan. Holders of Allowed Account Holder Claims are entitled to vote to accept or reject the Plan.

4. Class 4A — OpCo General Unsecured Claims

(a) *Classification:* Class 4A consists of all OpCo General Unsecured Claims.

(b) *Treatment:* Each Holder of an Allowed OpCo General Unsecured Claim will receive in exchange for such Allowed OpCo General Unsecured Claim:

(i) If the Sale Transaction is consummated by the Outside Date:

A. its Pro Rata share of Distributable Cryptocurrency in Cash;

- B. its Pro Rata share of Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;
  - C. its Pro Rata share of Distributable OpCo Cash; and
  - D. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at OpCo; or
- (ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:
- A. its Pro Rata share of Distributable Cryptocurrency in Cash;
  - B. its Pro Rata share of Distributable OpCo Cash; and
  - C. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at OpCo.
- (c) *Voting:* Class 4A is Impaired under the Plan. Holders of Allowed OpCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

5. Class 4B — HoldCo General Unsecured Claims

- (a) *Classification:* Class 4B consists of all HoldCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed HoldCo General Unsecured Claim will receive in exchange for such Allowed HoldCo General Unsecured Claim:
  - (i) its Pro Rata share of Distributable HoldCo Cash; and
  - (ii) to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to HoldCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to HoldCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at HoldCo.

- (c) *Voting:* Class 4B is Impaired under the Plan. Holders of Allowed HoldCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

6. Class 4C — TopCo General Unsecured Claims

- (a) *Classification:* Class 4C consists of all TopCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed TopCo General Unsecured Claim will receive in exchange for such Allowed TopCo General Unsecured Claim:
  - (i) its Pro Rata share of Distributable TopCo Cash; and
  - (ii) to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to TopCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable at TopCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at TopCo.
- (c) *Voting:* Class 4C is Impaired under the Plan. Holders of Allowed TopCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 5 — Alameda Loan Facility Claims

- (a) *Classification:* Class 5 consists of all Alameda Loan Facility Claims.
- (b) *Treatment:* If the FTX Settlement becomes effective, each Holder of an Allowed Alameda Loan Facility Claim shall, at the election of the Debtors with the consent of the Committee, in their sole discretion, following written notice to counsel to FTX, Alameda and to the official committee of unsecured creditors in the FTX Bankruptcy Proceeding of such election, which written notice shall be given no later than the date that is thirty (30) days after the Confirmation Hearing, (a) withdraw its Alameda Loan Facility Claims in their entirety, with prejudice to FTX or any other party reasserting such claims, or (b) contribute the Alameda Loan Facility Claims to OpCo. If the FTX Settlement does not become effective, the Alameda Loan Facility Claims shall be subordinated to all Allowed Claims at OpCo, HoldCo, and TopCo, including, but not limited to, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, Allowed Account Holder Claims, Allowed OpCo General Unsecured Claims, Allowed HoldCo General Unsecured Claims, and Allowed TopCo General Unsecured Claims; *provided, however*, if the Bankruptcy Court denies subordination of the Alameda Loan Facility Claims, then such Alameda Loan Facility Claims shall be *pari passu* with General Unsecured Claims at the applicable Debtor entity.
- (c) *Voting:* Class 5 is Impaired under the Plan. Holders of Allowed Alameda Loan Facility Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Allowed Alameda Loan Facility Claims are not entitled to vote to accept or reject the Plan.



8. Class 6 — Section 510(b) Claims

- (a) *Classification:* Class 6 consists of all Section 510(b) Claims against TopCo.
- (b) *Allowance:* Notwithstanding anything to the contrary herein, a Section 510(b) Claim against TopCo, if any such Section 510(b) Claim exists, may only become Allowed by Final Order of the Bankruptcy Court.
- (c) *Treatment:* Each Holder of Allowed Section 510(b) Claims against TopCo will receive, to effectuate distributions, if applicable, from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to TopCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to TopCo shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims at TopCo.
- (d) *Voting:* Class 6 is Impaired under the Plan. Holders (if any) of Allowed Section 510(b) Claims against TopCo are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders (if any) of Allowed Section 510(b) Claims against TopCo are not entitled to vote to accept or reject the Plan.

9. Class 7 — Intercompany Claims

- (a) *Classification:* Class 7 consists of all Intercompany Claims.
- (b) *Treatment:* Each Intercompany Claim shall receive the treatment for such Intercompany Claim as determined by the Bankruptcy Court.
- (c) *Voting:* Holders of Intercompany Claims are either Unimpaired or Impaired, and such Holders of Intercompany Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

10. Class 8 — Intercompany Interests

- (a) *Classification:* Class 8 consists of all Intercompany Interests.
- (b) *Treatment:* On the Effective Date, all Intercompany Interests shall be, at the option of the Debtors, either (a) Reinstated in accordance with Article III.G of the Plan or (b) set off, settled, addressed, distributed, contributed, merged, or cancelled, in each case in accordance with the Restructuring Transactions Memorandum.
- (c) *Voting:* Holders of Intercompany Interests are either Unimpaired or Impaired, and such Holders of Intercompany Interests are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

11. Class 9 — Existing Equity Interests

- (a) *Classification:* Class 9 consists of all Existing Equity Interests.
- (b) *Treatment:* Each Holder of Existing Equity Interests will receive, to effectuate distributions, if applicable, from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to TopCo; *provided* that any distributions on account of Wind-Down Debtor Assets attributable at TopCo shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims at TopCo.
- (c) *Voting:* Class 9 is Impaired under the Plan. Holders of Existing Equity Interests are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan.

**D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Wind-Down Debtor's rights in respect of any Unimpaired Claim, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

**E. Elimination of Vacant Classes; Presumed Acceptance by Non-Voting Classes**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**F. Subordinated Claims**

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims against and Allowed Interests in the Debtors and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Wind-Down Debtor reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**G. Intercompany Interests**

To the extent Reinstated under the Plan, distributions (if any) on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience and due to the importance of maintaining the corporate structure given the existing intercompany systems connecting the Debtors and their Affiliates, and in exchange for the Debtors' and Wind-Down Debtor's agreement under the Plan to make certain distributions to the Holders of Allowed Claims.

## **H. Controversy Concerning Impairment**

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

## **I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code is satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims or Interests. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

# **ARTICLE IV.**

## **PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

### **A. General Settlement of Claims and Interests**

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as well as a finding by the Bankruptcy Court that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

### **B. Restructuring Transactions**

On or before the Effective Date, the applicable Debtors will take any action as may be necessary or advisable to effectuate the Restructuring Transactions described in the Plan, the Restructuring Transactions Memorandum, and the Customer Onboarding Protocol, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (4) the transfer or distribution of any Cryptocurrency or Cash pursuant to the Asset Purchase Agreement, or the Liquidation Procedures, as applicable; (5) the execution and delivery of the Plan Administrator Agreement; (6) any transactions necessary or appropriate to form or convert into

the Wind-Down Debtor; (7) such other transactions that are required to effectuate the Restructuring Transactions, including any sales, mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (8) all transactions necessary to provide for the purchase of the Acquired Assets by Purchaser under the Asset Purchase Agreement; and (9) all other actions that the applicable Entities determine to be necessary or appropriate, or that are reasonably requested by the Purchaser in accordance with the Asset Purchase Agreement, including making filings or recordings that may be required by applicable law.

The Confirmation Order shall, and shall be deemed to, pursuant to sections 1123 and 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Restructuring Transactions.

### **C. The Sale Transaction**

If the Sale Transaction is consummated by the Outside Date, pursuant to the terms of the Asset Purchase Agreement, then the following terms shall govern:

On or prior to the Effective Date, the Debtors shall have consummated the Sale Transaction, and, among other things, the Acquired Assets and Assumed Liabilities shall have transferred to the Purchaser free and clear of all Liens, Claims, Interests, charges, or other encumbrances, and the Purchaser shall pay to the Debtors or Holders of Account Holder Claims and Holders of OpCo General Unsecured Claims, as applicable, the proceeds from the Sale Transaction, as and to the extent provided for in the Asset Purchase Agreement, and this Plan. The Confirmation Order shall authorize the Debtors, the Purchaser, and the Wind-Down Debtor, as applicable, to undertake the transactions contemplated by the Asset Purchase Agreement, including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code.

The Debtors and Purchaser shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Sale Transaction pursuant to the terms of the Asset Purchase Agreement the Customer Onboarding Protocol, and this Plan. The Debtors shall be authorized to sell any Cryptocurrency to satisfy all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims. On and after the Effective Date, except as otherwise provided in the Plan and the Plan Administrator Agreement, the Wind-Down Debtor, or the Purchaser, as applicable, may operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

Notwithstanding anything contained in this Plan and any Definitive Documents, if the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated, all provisions contained in this Plan and the Definitive Documents governing the Sale Transaction shall have no further force and effect, and the provisions governing the Liquidation Transaction shall govern. The rights and remedies of the Seller and Purchaser under the Asset Purchase Agreement and any related orders of the Bankruptcy Court shall be expressly preserved.

### **D. The Liquidation Transaction**

If the Sale Transaction is not consummated by the Outside Date, pursuant to the Asset Purchase Agreement, then the following terms shall govern:

1. *The Liquidation Transaction*

On or after the Outside Date, the Debtors will pursue the Liquidation Transaction in accordance with the Liquidation Procedures. Pursuant to the Liquidation Transaction, the Debtors, the Wind-Down Debtor, or the Plan Administrator, as applicable, will distribute certain of the Cryptocurrency in-kind to Holders of Account Holder Claims in accordance with Article III.C of the Plan, transfer all Wind-Down Debtor Assets to the Wind-Down Debtor, liquidate certain of the Cryptocurrency, distribute Cash to Holders of Claims, wind down and dissolve the Debtors, and pursue final administration of the Debtors' Estates pursuant to the Bankruptcy Code.

The Debtors, or the Wind-Down Debtor, as applicable, shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Liquidation Transaction pursuant to this Plan. On or before the date that is twenty-one days prior to the anticipated commencement of the Liquidation Transaction, the Debtors, or the Wind-Down Debtor, as applicable, shall file the Liquidation Procedures with the Bankruptcy Court. Parties in interest shall have ten days to object to the Liquidation Procedures, and if no objections are timely filed, the Liquidation Procedures shall be approved. In the event of a timely objection, the Bankruptcy Court shall adjudicate any objection to the Liquidation Procedures.

On and after the Effective Date, except as otherwise provided in the Plan, the Plan Administrator Agreement, and the Liquidation Procedures, the Debtors or the Wind-Down Debtor, as applicable, may operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

2. *Cryptocurrency Rebalancing*

Prior to the Effective Date the Debtors shall, in consultation with the Committee, be authorized to rebalance their Cryptocurrency portfolio to ensure that the Debtors can effectuate *pro rata* in-kind distributions of the Distributable Cryptocurrency according to Article III.C.3(c) of this Plan, *provided* that such rebalancing shall be in accordance with the Asset Purchase Agreement (if the Asset Purchase Agreement has not been terminated). The Debtors may effectuate such rebalancing by (i) selling such Cryptocurrency that cannot be distributed to Account Holders, (ii) purchasing Cryptocurrency supported by Voyager's or Purchaser's platform (as provided by the Asset Purchase Agreement) that shall be distributed to Account Holders, and (iii) engaging in any other transaction, including the execution of trades of Cryptocurrency, necessary or appropriate to effectuate distributions of the Distributable Cryptocurrency to Holders of Allowed Account Holder Claims.

**E. Employee Transition Plan**

The Debtors shall be authorized to implement the Employee Transition Plan, the terms of which shall be reasonably acceptable to Purchaser and the Committee and included in the Plan Supplement. The Employee Transition Plan shall help ensure that employees are available to provide transition services to the Debtors and/or the Wind-Down Debtor to effectuate the Sale Transaction and to wind down the Debtors' Estates.



## **F. Non-Released D&O Claims**

Any Claims or Causes of Action held by the Debtors or their respective estates against the Debtors' CEO and/or CCO (regardless of any fiduciary capacity in which such individuals were acting) that are expressly related to approval of the 3AC Loan are not released pursuant to the Plan (collectively, the "Non-Released D&O Claims"), and shall be assigned and transferred to the Wind-Down Debtor to be pursued, settled, or resolved by the Wind-Down Debtor in accordance with the terms of Article IV.G of this Plan and subject to the Wind-Down Budget. Any claims against the D&O Carriers that the Debtors' insurance transactions within the 90 days prior to the Petition Date are avoidable under the Bankruptcy Code, applicable state law, or both (the "Non-Released Insurance Claims") shall be assigned and transferred to the Wind-Down Debtor to be pursued, settled, or resolved solely by the Wind-Down Debtor in accordance with the terms of Article IV.G of this Plan. The Wind-Down Debtor shall be a successor to the Debtors' rights, title, and interest in any Non-Released D&O Claims and Non-Released Insurance Claims, and the Wind-Down Debtor shall have standing to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims in accordance with the terms of Article IV.G of this Plan; *provided* that: (i) any recovery by the Wind-Down Debtor (and the beneficiaries thereof) on account of any Non-Released D&O Claim, including in each case by way of settlement or judgment, shall be satisfied solely by and to the extent of the proceeds of the Debtors' available D&O Liability Insurance Policies (and/or from the D&O Carriers directly) after payment from such D&O Liability Insurance Policies of any and all covered costs and expenses incurred in connection with the defense of the Non-Released D&O Claims; (ii) any party, including any trustee or any beneficiary of the Wind-Down Debtor, seeking to execute, garnish, or otherwise attempt to collect on any settlement of or judgment in the Non-Released D&O Claims shall do so solely upon available insurance coverage from the Debtors' available D&O Liability Insurance Policies; and (iii) no party shall (a) record any judgment against the CEO or CCO, or (b) otherwise attempt to collect, directly or indirectly, from the personal assets of the CEO or CCO with respect to the Non-Released D&O Claims. For the avoidance of doubt, this provision does not enjoin, limit, or impair direct claims held by third parties against the Debtors' CEO or CCO (if any) other than any direct claims held by Holders of Claims or Interests that opt into the third-party release in Article VIII.B of this Plan. Only upon the occurrence of the earlier of (x) a release being given as part of any later settlement of the Non-Released D&O Claims; (y) final resolution of any coverage claims asserted against the Debtors' available D&O Liability Insurance Policies on account of the Non-Released D&O Claims; or (z) exhaustion of the available insurance coverage under the D&O Liability Insurance Policies, the Non-Released D&O Claims shall be released and discharged without the need for further action or Bankruptcy Court order. For the avoidance of doubt, any release of the Non-Released D&O Claims shall not become effective until one of the three conditions stated in the preceding sentence above has been met.

## **G. The D&O Settlement**

On the Effective Date, the terms of the D&O Settlement shall be effectuated as provided in this Article IV.G.

Pursuant to the D&O Settlement, CEO shall repay the \$1,900,000 received from the Debtors on or around February 28, 2022, by paying the after-tax amount of such transfer (approximately \$1,125,000) to OpCo in cash and assigning the right, if any, to any tax refund for the balance to the Wind-Down Debtor. CEO shall subordinate any Claims (including any indemnification claims asserted under this Art. IV.F) he holds against the Debtors until all other Holders of Claims are paid in full. CCO shall subordinate 50 percent of any Claims he holds other than indemnification claims (and 100% of any indemnification claims asserted under this Art. IV.F) against the Debtors until all other Holders of Claims are paid in full; *provided, however*, that in the event the D&O Carriers deny coverage to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.



CEO and CCO, each as insureds, under the D&O Liability Insurance Policies agree: (i) not to draw down on the Side-A Policy; *provided, however*, that should coverage continue to be available under the Side-A Policy following resolution of the Debtors' and/or the Wind-Down Debtor's claims for the avoidance of the premium paid for the policy (whether by judgment or settlement or otherwise) such officer shall be entitled to seek coverage under the Side-A Policy to the extent any such coverage remains; and (ii) not to object to any settlement by the Debtors or Wind Down Entity of avoidance claims under the Side-A Policy, even if such settlement results in termination of benefits under the Side-A Policy. For the avoidance of doubt, this agreement is not intended to and shall not alter or amend each of the insureds' duties under the D&O Liability Insurance Policies. In the event that any insurer under the D&O Liability Insurance Policies denies coverage for any reason, the Wind-Down Debtor shall have the right to bring a coverage claim against the insurer(s) in the name of the insured, the insureds shall reasonably cooperate with respect to any such claim, and the insured may participate at their election (and at their sole cost). For the avoidance of doubt, nothing contained in this Plan is intended as a waiver or release of the Debtors' and/or Wind-Down Debtor's right to assert any Non-Released D&O Claim, but rather limits such recovery in the manner set forth above.

CEO and CCO shall be entitled to receive their salary and benefits for as long as they work for the Debtors and/or the Wind-Down Debtor and retain the right to assert claims for advancement and indemnification up to the limits of any available coverage in the event any of the insurers that issued the Management Liability Policy, the Excess Policy, or the Side-A Policy denies coverage to CEO and/or CCO based upon or arising out of the lack of a formal claim for indemnification; *provided, however*, that any such indemnification or advancement claims shall be subordinated in full unless and until all other Holders of Claims are paid in full; *provided, further*, that in the event that any of the D&O Carriers deny coverage to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.

CEO and CCO shall subordinate any and all rights and entitlements under the Cornerstone A-Side Management Liability Insurance Policy to Voyager Digital Ltd., Policy Number ELU184179-22, to any recovery by the Debtors and/or the Wind-Down Debtor on account of the Debtors' and/or Wind-Down Debtor's claims for the avoidance of the premium paid for the policy. For the avoidance of doubt, should coverage continue to be available under the Side-A Policy following resolution of the Debtors' and/or the Wind-Down Debtor's claims for the avoidance of the premium paid for the policy (whether by judgment or settlement or otherwise), CEO and/or CCO shall be entitled to seek coverage under the Side-A Policy. CEO and CCO shall remain at, and continue performing the responsibilities of, their respective position(s) with the Debtors and assist with the Debtors' transition for at least 30 days from entry of the Confirmation Order; *provided* that CCO shall have no obligation to remain at his position with the Debtors beyond January 15, 2023 and the CEO shall have the right to pursue and engage in any employment opportunity, business venture, consulting arrangement, or investment that may become available; *provided, further*, that both the CEO and CCO shall be available to the Debtors and/or the Wind-Down Debtor for a maximum of five hours per month for the one year following the Effective Date.

In the event that the sworn financial disclosure statements under penalty of perjury provided to the Debtors, the Special Committee and the Committee by CEO and CCO are later determined at any time by Final Order of the Bankruptcy Court or other court of competent jurisdiction to be materially inaccurate, (a) the limitations on recovery by the Wind-Down Debtor under this Article IV.G shall no longer apply, (b) any and all release, exculpation and injunction provisions in Article VIII of this Plan with respect to CEO and/or CCO (as applicable) shall be deemed null and void, (c) all Releasing Parties' rights with respect to the CEO and/or CCO (as applicable) shall be fully intact and preserved, (d) amounts paid by CEO shall not be repaid by the Wind-Down Debtor, and (e) any applicable statute of limitations shall be deemed tolled

from the Petition Date to the date of entry of the order referenced above. The Wind-Down Debtor, as successor to the Debtors, shall have standing to bring a motion seeking relief pursuant to this Article IV.G.

Entry of the Confirmation Order shall be deemed approval of the D&O Settlement and, to the extent not already approved by the Bankruptcy Court, the Debtors or the Wind-Down Debtor, as applicable, are authorized to negotiate, execute, and deliver those documents necessary or appropriate to effectuate the D&O Settlement, without further notice or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors, the Wind-Down Debtor, the Committee, and the Special Committee may deem to be necessary to effectuate the D&O Settlement.

## **H. The Wind-Down Debtor**

On the Effective Date, the Wind-Down Debtor shall be formed or converted into for the benefit of the Wind-Down Debtor Beneficiaries and each of the Debtors shall transfer the Wind-Down Debtor Assets for distribution in accordance with the terms of the Plan. The Confirmation Order shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan.

### **1. Establishment of a Wind-Down Debtor**

Pursuant to the Plan Administrator Agreement, the Wind-Down Debtor will be established, formed, merged, or converted. The Wind-Down Debtor shall be the successor-in-interest to the Debtors, and the Wind-Down Debtor shall be a successor to the Debtors' rights, title, and interest to the Wind-Down Debtor Assets. The Wind-Down Debtor will conduct no business operations and will be charged with winding down the Debtors' Estates. The Wind-Down Debtor shall be managed by the Plan Administrator and shall be subject to the Wind-Down Debtor Oversight Committee. The Wind-Down Debtor shall be administered in accordance with the terms of the Plan Administrator Agreement and shall be subject to the Wind-Down Budget and the Non-Released D&O Claim Budget. For the avoidance of doubt, the Wind-Down Debtor shall not have any right or interest in any Cause of Action or Claim constituting an Acquired Asset. The Wind-Down Debtor shall be administered in a manner consistent with the SEC's published guidance on liquidating trusts.

Prior to the Effective Date, any and all of the Debtors' assets shall remain assets of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and on the Effective Date the Wind-Down Debtor Assets shall, subject to the Plan Administrator Agreement, be transferred to and vest in the Wind-Down Debtor. For the avoidance of doubt, to the extent not otherwise waived in writing, released, settled, compromised, assigned or sold pursuant to a prior order or the Plan, the Wind-Down Debtor specifically retains and reserves the right to assert, after the Effective Date, any and all of the Vested Causes of Action and related rights, whether or not asserted as of the Effective Date, and all proceeds of the foregoing, subject to the terms of the Plan, including without limitation Article IV.F and Article IV.G.

Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, only the Wind-Down Debtor and the Plan Administrator shall have the right to pursue or not to pursue, or, subject to the terms hereof and the Plan Administrator Agreement, compromise or settle any Wind-Down Debtor Assets transferred to the Wind-Down Debtor. On and after the Effective Date, the Wind-Down Debtor and the Plan Administrator may, without further Bankruptcy Court approval, commence, litigate, and settle any Vested Causes of Action or Claims relating to any Wind-Down Debtor Assets transferred to the Wind-Down Debtor or rights to payment or Claims that belong to the Debtors as of the Effective Date or are instituted by the Wind-Down Debtor and the Plan Administrator on or after the Effective Date, except as otherwise expressly

provided herein and in the Plan Administrator Agreement. All of the Wind-Down Debtor's activities shall be subject to the Wind-Down Budget and the Non-Released D&O Claim Budget. The Wind-Down Debtor shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code.

The Wind-Down Debtor shall be deemed hereby substituted as plaintiff, defendant, or in any other capacity for the Debtors and the Committee, as applicable, in any Causes of Action pending before the Bankruptcy Court or any other court that relates to a Wind-Down Debtor Asset without the need for filing any motion for such relief. On the Effective Date, the Debtors and the Plan Administrator shall execute the Plan Administrator Agreement and shall have established the Wind-Down Debtor pursuant hereto. In the event of any conflict between the terms of this Article IV.H and the terms of the Plan Administrator Agreement, the terms of the Plan Administrator Agreement shall control.

2. Wind-Down Debtor Assets

Notwithstanding any prohibition on assignability under applicable non-bankruptcy law, on the Effective Date and thereafter if additional Wind-Down Debtor Assets become available, the Debtors shall be deemed, subject to the Plan Administrator Agreement, to have automatically transferred to the applicable Wind-Down Debtor all of their right, title, and interest in and to all of the Wind-Down Debtor Assets, in accordance with section 1141 of the Bankruptcy Code. All such assets shall automatically vest in the Wind-Down Debtor free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims and Interests as set forth herein and the expenses of the Wind-Down Debtor as set forth herein and in the Plan Administrator Agreement. Thereupon, the Debtors shall have no interest in or with respect to the Wind-Down Debtor Assets or the Wind-Down Debtor.

3. Treatment of Wind-Down Debtor for Federal Income Tax Purposes; No Successor-in-Interest

The Wind-Down Debtor shall be established for the primary purpose of liquidating and distributing the Wind-Down Debtor Assets transferred to it, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Wind-Down Debtor. Accordingly, the Plan Administrator may, in an expeditious but orderly manner, liquidate the Wind-Down Debtor Assets, make timely distributions to the Wind-Down Debtor Beneficiaries and not unduly prolong its duration. The Wind-Down Debtor shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Wind-Down Debtor Agreement. The record holders of beneficial interests shall be recorded and set forth in a register maintained by the Wind-Down Debtor expressly for such purpose.

The Wind-Down Debtor is intended to qualify as a "grantor trust" for federal income tax purposes to the extent reasonably practicable, with the Wind-Down Debtor Beneficiaries treated as grantors and owners of the Wind-Down Debtor. However, with respect to any of the assets of the Wind-Down Debtor that are subject to potential disputed claims of ownership or uncertain distributions, *or* to the extent "liquidating trust" treatment is otherwise unavailable, the Debtors anticipate that such assets will be subject to disputed ownership fund treatment under Section 1.468B-9 of the Treasury Regulations, that any appropriate elections with respect thereto shall be made, and that such treatment will also be applied to the extent possible for state and local tax purposes. Under such treatment, a separate federal income tax return shall be filed with the IRS for any such account. Any taxes (including with respect to interest, if any, earned in the account) imposed on such account shall be paid out of the assets of the respective account (and reductions shall be made to amounts disbursed from the account to account for the need to pay such taxes).

4. Appointment of Plan Administrator

The Plan Administrator shall be selected by the Committee, in consultation with the Debtors, and shall be identified in the Plan Supplement. The appointment of the Plan Administrator shall be approved in the Confirmation Order, and the Plan Administrator's duties shall commence as of the Effective Date. The Plan Administrator shall administer the distributions to the Wind-Down Debtor Beneficiaries and shall serve as a representative of the Estates under section 1123(b) of the Bankruptcy Code for the purpose of enforcing Vested Causes of Action belonging to the Estates that are not released, waived, settled, compromised, or transferred pursuant to the Plan and subject to the limitations set forth in the Plan, including Article IV.F and Article IV.G.

In accordance with the Plan Administrator Agreement, the Plan Administrator shall serve in such capacity through the earlier of (i) the date on which the Wind-Down Debtor is dissolved in accordance with the Plan Administrator Agreement, and (ii) the date on which a Plan Administrator resigns, is terminated, or is otherwise unable to serve; *provided, however*, that, in the event that a Plan Administrator resigns, is terminated, or is otherwise unable to serve, the Wind-Down Debtor Oversight Committee shall appoint a successor to serve as a Plan Administrator in accordance with the Plan Administrator Agreement. If the Wind-Down Debtor Oversight Committee does not appoint a successor within the time periods specified in the Plan Administrator Agreement, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Wind-Down Debtor, shall approve a successor to serve as a Plan Administrator.

5. Responsibilities of Plan Administrator

Responsibilities of the Plan Administrator shall be as identified in the Plan Administrator Agreement and shall include, but are not limited to:

- (a) implementing the Wind-Down Debtor, and making distributions contemplated by the Plan;
- (b) marshalling, marketing for sale, and winding down any of the Debtors' assets constituting Wind-Down Debtor Assets;
- (c) appointing an independent director at each Debtor to act as a fiduciary for such Debtor entity in connection with the resolution of the Intercompany Claims;
- (d) overseeing the accounts of the Debtors and the Wind-Down Debtor and the wind down and dissolution of the Debtors and the Wind-Down Debtor, including effectuating the transactions described in the Restructuring Transactions Memorandum;
- (e) receiving, maintaining, conserving, supervising, prosecuting, collecting, settling, managing, investing, protecting, and where appropriate, causing the Wind-Down Debtor to abandon the Wind-Down Debtor Assets, including causing the Wind-Down Debtor to invest any moneys held as Wind-Down Debtor Assets;
- (f) opening and maintaining bank accounts on behalf of or in the name of the Debtors or the Wind-Down Debtor, including, in the Plan Administrator's discretion, separating bank accounts for each of the Debtors;

- (g) entering into any agreement or executing any document or instrument required by or consistent with the Plan, the Confirmation Order, or the Plan Administrator Agreement, and to perform all obligations thereunder;
- (h) collecting and liquidating all Wind-Down Debtor Assets, including the sale of any Wind-Down Debtor Assets;
- (i) protecting and enforcing the rights to the Wind-Down Debtor Assets (including any Vested Causes of Action and Contributed Third-Party Claims) vested in the Wind-Down Debtor and Plan Administrator by the Plan Administrator Agreement by any method deemed appropriate, including, without limitation, by judicial proceedings or otherwise;
- (j) investigating any Wind-Down Debtor Assets, and any other potential Vested Causes of Action and Contributed Third-Party Claims;
- (k) reviewing, reconciling, compromising, settling, objecting, or prosecuting Claims or Interests of any kind;
- (l) seeking the examination of any Person pursuant to Federal Rule of Bankruptcy Procedure 2004;
- (m) retaining professionals, disbursing agents, and other agents, independent contractors, and third parties pursuant to the Plan Administrator Agreement and paying the reasonable compensation thereof;
- (n) paying all lawful expenses, debts, charges, taxes, and other liabilities, and making all other payments relating to the Wind-Down Debtor Assets, solely out of Wind-Down Debtor Assets;
- (o) prosecuting and settling the Vested Causes of Action, including, without limitation, the 3AC Claims, FTX Claims, Alameda Claims, Contributed Third-Party Claims, and any causes of action not included in the Asset Purchase Agreement or released under the Plan;
- (p) reviewing, reconciling, pursuing, commencing, prosecuting, compromising, settling, dismissing, releasing, waiving, withdrawing, abandoning, resolving, or electing not to pursue all Vested Causes of Action and Contributed Third-Party Claims;
- (q) acquiring litigation and other claims related to the Debtors, and prosecuting such claims;
- (r) reviewing and compelling turnover of the Debtors or the Wind-Down Debtor's property;
- (s) calculating and making all Distributions to the holders of Allowed Claims against each Debtor and, solely to the extent of payment in full of Allowed Claims, to holders of Allowed Interests, as provided for in, or contemplated by, the Plan and the Plan Administrator Agreement; *provided* that because the Plan does not substantively consolidate the Debtors' Estates, the Plan Administrator shall make



Distributions from the Wind-Down Debtor Assets to the holders of Claims and Interests (if applicable) against that specific Debtor;

- (t) establishing, administering, adjusting, and maintaining the Wind-Down Reserve and the Disputed Claims Reserve;
- (u) withholding from the amount distributable to any Person the maximum amount needed to pay any tax or other charge that the Plan Administrator has determined, based upon the advice of his agents or professionals, may be required to be withheld from such Distribution under the income tax or other laws of the United States or of any state or political subdivision thereof;
- (v) in reliance upon the Debtors' Schedules, the official Claims Register maintained in the Chapter 11 Cases and the Debtors' filed lists of equity security holders, reviewing, and where appropriate, allowing or objecting to Claims and (if applicable) Interests, and supervising and administering the commencement, prosecution, settlement, compromise, withdrawal, or resolution of all objections to Disputed Claims and (if applicable) Disputed Interests required to be administered by the Wind-Down Debtor;
- (w) making all tax withholdings, filing tax information returns, filing and prosecuting tax refunds claims, making tax elections by and on behalf of the Debtors or the Wind-Down Debtor, and filing tax returns for the Debtors or the Wind-Down Debtor pursuant to and in accordance with the Plan, and paying taxes, if any, payable for and on behalf of the Debtors or the Wind-Down Debtor, as applicable; *provided, however,* that notwithstanding any other provision of the Plan Administrator Agreement, the Plan Administrator shall not have any responsibility or personal liability in any capacity whatsoever for the signing or accuracy of the Debtors' income tax returns that are due to be filed after the Effective Date or for any tax liability related thereto;
- (x) abandoning or donating to a charitable organization qualifying under IRC section 501(c)(3) any Wind-Down Debtor Assets that the Plan Administrator determines to be too impractical to distribute or of inconsequential value;
- (y) seeking a determination of tax liability or refund under Bankruptcy Code section 505;
- (z) establishing reserves for taxes, assessments, and other expenses of administration of the Debtors or the Wind-Down Debtor as may be necessary and appropriate for the proper operation of matters incident to the Debtors or the Wind-Down Debtor;
- (aa) paying Wind-Down Debtor Expenses;
- (bb) if the Plan Administrator deems appropriate in the Plan Administrator's sole discretion, seeking to establish a bar date for filing proofs of Interest in any Debtor or otherwise to determine the holders and extent of Allowed Interests in any Debtor;



- (cc) purchasing and carrying all insurance policies that the Plan Administrator deems reasonably necessary or advisable and paying all associated insurance premiums and costs;
- (dd) undertaking all administrative functions remaining in the Chapter 11 Cases to the extent necessary to carry out the Debtors', the Wind-Down Debtor's, or the Plan Administrator's duties under the Plan, including reporting and making required payments of fees to the U.S. Trustee and overseeing the closing of the Chapter 11 Cases;
- (ee) retaining, terminating, appointing, hiring, or otherwise employees, personnel, management, and directors at any of the Debtors to the extent necessary to carry out the purposes of the Plan Administrator Agreement and the Plan, including, without limitation, to address any disputes between the Debtors;
- (ff) exercising, implementing, enforcing, and discharging all of the terms, conditions, powers, duties, and other provisions of the Plan, the Confirmation Order, and the Plan Administrator Agreement; and
- (gg) taking all other actions consistent with the provisions of the Plan and the Plan Administrator Agreement that the Plan Administrator deems reasonably necessary or desirable to administer the Debtors and the Wind-Down Debtor.

6. The Wind-Down Debtor Oversight Committee

The Wind-Down Debtor Oversight Committee shall consist of those parties selected by the Committee and identified in the Plan Supplement, and which, at no time shall consist of greater than seven members.

The Wind-Down Debtor Oversight Committee shall have the responsibility to review and advise the Plan Administrator with respect to the liquidation and distribution of the Wind-Down Debtor Assets transferred to the Wind-Down Debtor in accordance herewith and the Plan Administrator Agreement. For the avoidance of doubt, in advising the Plan Administrator, the Wind-Down Debtor Oversight Committee shall maintain the same fiduciary responsibilities as the Plan Administrator. Vacancies on the Wind-Down Debtor Oversight Committee shall be filled by a Person designated by the Plan Administrator, subject to the unanimous consent of the remaining member or members of the Wind-Down Debtor Oversight Committee. The Plan Administrator shall have the authority to seek an order from the Bankruptcy Court removing or replacing members of the Wind-Down Debtor Oversight Committee for cause.

7. Expenses of Wind-Down Debtor

The Wind-Down Debtor Expenses shall be paid from the Wind-Down Debtor Assets subject to the Wind-Down Budget and the Non-Released D&O Claim Budget.

8. Insurance; Bond

The Plan Administrator may obtain insurance coverage (in the form of an errors and omissions policy or otherwise) with respect to the liabilities and obligations of the Plan Administrator and the Wind-Down Debtor Oversight Committee under the Plan Administrator Agreement. Unless otherwise agreed to by the Wind-Down Debtor Oversight Committee, the Plan Administrator shall serve with a bond, the terms

of which shall be agreed to by the Wind-Down Debtor Oversight Committee, and the cost and expense of which shall be paid by the Wind-Down Debtor.

9. Fiduciary Duties of the Plan Administrator

Pursuant hereto and the Plan Administrator Agreement, the Plan Administrator shall act in a fiduciary capacity on behalf of the interests of all Holders of Claims and Interests that will receive distributions pursuant to Plan.

10. Termination of the Wind-Down Debtor

The Wind-Down Debtor will terminate on the earlier of: (a) (i) the final liquidation, administration and distribution of the Wind-Down Debtor Assets in accordance with the terms of the Plan Administrator Agreement and the Plan, and its full performance of all other duties and functions as set forth herein or in the Plan Administrator Agreement and (ii) the Chapter 11 Cases of the Debtors have been closed; or (b) the Plan Administrator determines in its reasonable judgment that the Wind-Down Debtor lacks sufficient assets and financial resources, after reasonable collection efforts, to complete the duties and powers assigned to him or her under the Plan, the Confirmation Order and/or the Plan Administrator Agreement. After (x) the final distributions pursuant hereto, (y) the Filing by or on behalf of the Wind-Down Debtor of a certification of dissolution with the Bankruptcy Court, and (z) any other action deemed appropriate by the Plan Administrator, the Wind-Down Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions.

11. Liability of Plan Administrator; Indemnification

Neither the Plan Administrator, the Wind-Down Debtor Oversight Committee, their respective members, employees, employers, designees or professionals, or any of their duly designated agents or representatives (each, a “Wind-Down Debtor Party” and collectively, the “Wind-Down Debtor Parties”) shall be liable for losses, claims, damages, liabilities or expenses in connection with the affairs of the Wind-Down Debtor or for the act or omission of any other Wind-Down Debtor Party, nor shall the Wind-Down Debtor Parties be liable for any act or omission taken or omitted to be taken pursuant to the discretion, powers and authority conferred, or in good faith believed to be conferred by the Plan Administrator Agreement or the Plan other than for specific acts or omissions resulting from such Wind-Down Debtor Party’s willful misconduct, gross negligence or actual fraud. Subject to the Plan Administrator Agreement, the Plan Administrator shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee, and the Wind-Down Debtor Oversight Committee shall be entitled to enjoy all of the rights, powers, immunities and privileges of an official committee of unsecured creditors. The Plan Administrator or the Wind-Down Debtor Oversight Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Plan Administrator nor the Wind-Down Debtor Oversight Committee shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Plan Administrator, the Wind-Down Debtor Oversight Committee, or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or actual fraud. The Wind-Down Debtor shall indemnify and hold harmless the Wind-Down Debtor Parties (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys’ fees, disbursements, and related expenses) that such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out

of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Wind-Down Debtor or the Plan or the discharge of their duties hereunder; *provided, however*, that no such indemnification will be made to such Persons for actions or omissions as a result of willful misconduct, gross negligence, or actual fraud. Persons dealing or having any relationship with the Plan Administrator shall have recourse only to the Wind-Down Debtor Assets and shall look only to the Wind-Down Debtor Assets to satisfy any liability or other obligations incurred by the Wind-Down Debtor or the Wind-Down Debtor Oversight Committee to such Person in carrying out the terms of the Plan Administrator Agreement, and neither the Plan Administrator nor the Wind-Down Debtor Oversight Committee, shall have any personal obligation to satisfy any such liability. The Plan Administrator and/or the Wind-Down Debtor Oversight Committee members shall not be liable whatsoever except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into the Plan Administrator Agreement against any of them. The Wind-Down Debtor shall promptly pay expenses reasonably incurred by any Wind-Down Debtor Party in defending, participating in, or settling any action, proceeding or investigation in which such Wind-Down Debtor Party is a party or is threatened to be made a party or otherwise is participating in connection with the Plan Administrator Agreement or the duties, acts or omissions of the Plan Administrator or otherwise in connection with the affairs of the Wind-Down Debtor, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Wind-Down Debtor Party hereby undertakes, and the Wind-Down Debtor hereby accepts his or her undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such exculpated party is not entitled to be indemnified therefor under the Plan Administrator Agreement. The foregoing indemnity in respect of any Wind-Down Debtor Party shall survive the termination of such Wind-Down Debtor Party from the capacity for which they are indemnified.

## 12. No Liability of the Wind-Down Debtor

On and after the Effective Date, the Wind-Down Debtor shall have no liability on account of any Claims or Interests except as set forth herein and in the Plan Administrator Agreement. All payments and all distributions made by the Plan Administrator hereunder shall be in exchange for all Claims or Interests against the Debtors.

### **I. Sources of Consideration for Plan Distributions**

Distributions under the Plan shall be funded by (i) the proceeds of Purchaser's payment obligations under Sections 2.1 and 2.2 of the Asset Purchase Agreement and distributions of Acquired Coins pursuant to Sections 6.12, and 6.14 of the Asset Purchase Agreement, (ii) the Wind-Down Debtor from the Wind-Down Debtor Assets; *provided, however*, that Allowed Professional Fee Claims shall be paid from the Professional Fee Escrow Account in the first instance. The Wind-Down Debtor Assets shall be used to pay the Wind-Down Debtor Expenses (including the compensation of the Plan Administrator and any professionals retained by the Wind-Down Debtor), and to satisfy payment of Allowed Claims and Interests as set forth in the Plan.

### **J. Corporate Existence and Dissolution**

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) in effect

prior to the Effective Date, except to the extent such certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) are amended pursuant to the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings under applicable state or federal law).

On and after the Effective Date, the Wind-Down Debtor will be authorized and directed to implement the Plan and any applicable orders of the Bankruptcy Court, and the Wind-Down Debtor shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

Upon a certification to be Filed with the Bankruptcy Court by the Plan Administrator of all distributions having been made and completion of all of its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Wind-Down Debtor shall be deemed to be dissolved without any further action by the Debtors or the Wind-Down Debtor, including the Filing of any documents with the secretary of state for the state in which the Wind-Down Debtor are formed or any other jurisdiction. The Plan Administrator, however, shall have authority to take all necessary actions to dissolve the Debtors or the Wind-Down Debtor in and withdraw the Wind-Down Debtor from applicable states.

As soon as practicable after the Effective Date, the Wind-Down Debtor shall take such actions as the Wind-Down Debtor may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Wind-Down Debtor on behalf of any Wind-Down Debtor without need for any action or approval by the shareholders or board of directors or managers of such Debtor. On and after the Effective Date, the Debtors or the Wind-Down Debtor (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. Pursuant to the terms of this Plan, any Money Transmitter Licenses that have not been terminated shall be deemed withdrawn and no further action is required to be taken by the Debtors or the Wind-Down Debtor to effectuate such withdrawal; *provided* that, following the Effective Date, the Debtors or the Wind-Down Debtor, as applicable, shall use commercially reasonable efforts to comply with all state banking department requirements for the surrender of a Money Transmitter License. Nothing in this Plan shall be construed to limit the rights of creditors, Debtors, the Wind-Down Debtor, or regulators to pursue recoveries against surety bonds maintained by the Debtors in connection with this Money Transmitter Licenses. Notwithstanding such Debtors' dissolution, such Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

#### **K. Corporate Action**

Upon the Effective Date, all actions contemplated under the Plan, Definitive Documents, and Asset Purchase Agreement shall be deemed authorized and approved in all respects, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, managing-members, limited or general partners, or officers of the Debtors, the Wind-Down Debtor or any other Entity, including: (1) appointment of the directors, managers, members, and officers for the Wind-Down Debtor as provided herein; (2) the issuances, transfer, and distribution of the Wind-Down Debtor Assets; (3) the formation of the Wind-Down Debtor and appointment of the Plan Administrator and Wind-Down Debtor Oversight Committee; (4) the formation of any entities pursuant to and the implementation of the Plan and performance of all actions and transactions contemplated hereby

and thereby; (5) the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; and (6) all other acts or actions contemplated by the Plan, Definitive Documents, and Asset Purchase Agreement or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions (including effectuating the Restructuring Transactions Memorandum and the Customer Onboarding Protocol) (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan, Definitive Documents, and Asset Purchase Agreement involving the corporate structure of the Debtors or the Wind-Down Debtor, as applicable, and any corporate action required by the Debtors or the Wind-Down Debtor, as applicable, in connection with the Plan shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Wind-Down Debtor, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Wind-Down Debtor, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, Securities, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Wind-Down Debtor, and any and all other agreements, documents, Securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Article IV.K shall be effective notwithstanding any requirements under non-bankruptcy law.

**L. Vesting of Assets in the Wind-Down Debtor**

Except as otherwise provided in the Plan, or in any agreement, instrument, or other document incorporated in the Plan, notwithstanding any prohibition of assignability under applicable non-bankruptcy law and in accordance with section 1141 of the Bankruptcy Code, on the Effective Date, all property constituting Wind-Down Debtor Assets, including all Vested Causes of Action of the Debtors (unless otherwise released, waived, compromised, settled, transferred, or discharged pursuant to the Plan), and any property acquired by any of the Debtors under the Plan shall vest in the Wind-Down Debtor, free and clear of all Liens, Claims, charges, or other encumbrances.

**M. Cancellation of Notes, Instruments, Certificates, and Other Documents**

On the later of the Effective Date and the date on which distributions are made pursuant to the Plan (if not made on the Effective Date), except for the purpose of evidencing a right to and allowing Holders of Claims and Interests to receive a distribution under the Plan or to the extent otherwise specifically provided for in the Plan, the Confirmation Order, or any agreement, instrument, or other document entered into in connection with or pursuant to the Plan or the Restructuring Transactions (including, without limitation, the Definitive Documents and the Asset Purchase Agreement), all notes, bonds, indentures, certificates, Securities, shares, purchase rights, options, warrants, collateral agreements, subordination agreements, intercreditor agreements, or other instruments or documents directly or indirectly evidencing, creating, or relating to any indebtedness or obligations of, or ownership interest in, the Debtors, giving rise to any Claims against or Interests in the Debtors or to any rights or obligations relating to any Claims against or Interests in the Debtors shall be deemed cancelled without any need for a Holder to take further action with respect thereto.

**N. Effectuating Documents; Further Transactions**

On and after the Effective Date, the Debtors, and its directors, managers, partners, officers, authorized persons, and members thereof, and the Wind-Down Debtor and Plan Administrator are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, Definitive Documents,



and Asset Purchase Agreement, in the name of and on behalf of the Debtors and Wind-Down Debtor, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

**O. Section 1146(a) Exemption**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Wind-Down Debtor, the Purchaser, or to any other Entity) of property under the Plan, Definitive Documents, and Asset Purchase Agreement or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Wind-Down Debtor; (2) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, including the Asset Purchase Agreement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**P. Preservation of Rights of Action**

In accordance with section 1123(b) of the Bankruptcy Code, the Wind-Down Debtor shall succeed to all rights to commence and pursue any and all Vested Causes of Action of the Debtors, whether arising before or after the Petition Date, including, without limitation, any actions specifically enumerated in the Schedule of Retained Causes of Action other than Causes of Action released, waived, settled, compromised, or transferred. Such rights shall be preserved by the Debtors and Wind-Down Debtor and shall vest in the Wind-Down Debtor, with the Wind-Down Debtor's rights to commence, prosecute, or settle such Causes of Action preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action expressly released, waived, settled, compromised, or transferred by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan or pursuant to the Asset Purchase Agreement, which shall be deemed released and waived by the Debtors and Wind-Down Debtor as of the Effective Date.

The Wind-Down Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the beneficiaries of the Wind-Down Debtor and in accordance with the Plan Administrator Agreement and the Plan. **No Entity may rely on the absence of a specific reference in the Schedules of Assets and Liabilities or Statement of Financial Affairs, the Plan, the Plan Supplement, the Disclosure Statement, or the Schedule of Retained Causes of Action to any Cause of Action against it as any indication that the Debtors or the Wind-Down Debtor, as applicable, will not pursue any and all available Causes of Action of the Debtors against it. The Wind-Down Debtor, on behalf of the Debtors and the Wind-Down Debtor, expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise provided in the Plan, including Article VIII of the**



**Plan.** Unless any Cause of Action of the Debtors is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or pursuant to a Final Order, the Wind-Down Debtor, on behalf of the Debtors and Wind-Down Debtor and in accordance with the Plan Administrator Agreement, expressly reserves all such Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation or Consummation.

The Wind-Down Debtor, on behalf of the Debtors, reserves and shall retain such Causes of Action of the Debtors notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold against any Entity shall vest in the Wind-Down Debtor, except as otherwise provided in the Plan, including Article VIII of the Plan. The Wind-Down Debtor, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Wind-Down Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court in accordance with the Plan.

#### **Q. Election to Contribute Third-Party Claims**

Because aggregating all Contributed Third-Party Claims may enable the pursuit and settlement of such litigation claims in a more efficient and effective manner, each Holder of a Claim or Interest may agree, by electing on its ballot or opt-in form, to contribute its Contributed Third-Party Claims to the Wind-Down Debtor. By electing such option on its ballot or opt-in form, each Contributing Claimant agrees that, subject to the occurrence of the Effective Date and the formation of the Wind-Down Debtor, it will be deemed, without further action, (i) to have irrevocably contributed its Contributed Third-Party Claims to the Wind-Down Debtor, and (ii) to have agreed to execute any documents reasonably requested by the Debtors or the Wind-Down Debtor to memorialize and effectuate such contribution.

#### **R. Contribution of Contributed Third-Party Claims**

On the Effective Date, all Contributed Third-Party Claims will be irrevocably contributed to the Wind-Down Debtor and shall thereafter be Wind-Down Debtor Assets for all purposes. No Person may rely on the absence of a specific reference in the Plan, the Disclosure Statement, the Confirmation Order, the Plan Administrator Agreement, the Plan Supplement, or any other document as any indication that the Wind-Down Debtor will or will not pursue any and all available Contributed Third-Party Claims against such Person. The Wind-Down Debtor shall have, retain, reserve, and be entitled to assert all Contributed Third-Party Claims fully to the same extent that the Contributing Claimants could have asserted such claims prior to the Effective Date. For the avoidance of doubt, the Contributed Third-Party Claims shall not include the rights of any of the Contributing Claimants to receive the distributions under the Plan on account of their Claims or Interests.

#### **S. Closing the Chapter 11 Cases**

On and after the Effective Date, the Wind-Down Debtor shall be permitted to classify all of the Chapter 11 Cases of the Debtors except for the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, as closed, and all contested matters relating to any of the Debtors, including objections to Claims or Interests and any adversary proceedings, may be administered and heard

in the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, irrespective of whether such Claims or Interests were Filed or such adversary proceeding was commenced against a Debtor whose Chapter 11 Case was closed.

## **ARTICLE V.**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **A. Assumption and Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy other than the Side-A Policy. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

#### **B. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or the Wind-Down Debtor, as applicable, under such Executory Contract or Unexpired Lease. Without limiting the general nature of the foregoing, and notwithstanding any non-bankruptcy law to the contrary, the Debtors and Wind-Down Debtor expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to any rejected Executory Contract or Unexpired Lease.

#### **C. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Counterparties to Executory Contracts or Unexpired Leases listed subject to rejection under the Plan shall be served with a notice of rejection of Executory Contracts and Unexpired Leases with the Plan Supplement. Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Claims, Noticing, and Solicitation Agent and served on the Debtors or Wind-Down Debtor, as applicable, no later than thirty days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, or the Wind-Down Debtor, the Estates, or their property without the need for any objection by the Wind-Down Debtor or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the**

**rejection of the Executory Contract or Unexpired Lease shall be deemed released, and be subject to the permanent injunction set forth in Article VIII.D of the Plan, including any Claims against any Debtor listed on the Debtors' schedules as unliquidated, contingent, or disputed.** All Allowed Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease shall be treated as General Unsecured Claims in accordance with Article III.C of the Plan.

#### **D. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed**

The Debtors, the Wind-Down Debtor, or the Purchaser, as applicable pursuant to the Asset Purchase Agreement, shall pay Cures, if any, on the Effective Date. The Debtors shall provide notice of the amount and timing of payment of any such Cure to the parties to the applicable assumed Executory Contracts or Unexpired Leases as part of the Plan Supplement. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure that differ from the ordinary course amounts paid or proposed to be paid by the Debtors, the Wind-Down Debtor, or the Purchaser shall be dealt with in the ordinary course of business and, if needed, shall be Filed with the Claims, Noticing, and Solicitation Agent on or before thirty days after the Effective Date. **If any counterparty to an Executory Contract or Unexpired Lease does not receive a notice of assumption and applicable cure amount, such counterparty shall have until on or before thirty days after the Effective Date to bring forth and File a request for payment of Cure.** Any such request that is not timely Filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Debtor or the Wind-Down Debtor, without the need for any objection by the Wind-Down Debtor or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied and released upon payment by the Debtors or the Wind-Down Debtor or the Purchaser of the Cure in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty); *provided, however*, that nothing herein shall prevent the Wind-Down Debtor or the Purchaser, as applicable, from paying any Cure Claim despite the failure of the relevant counterparty to File such request for payment of such Cure. The Wind-Down Debtor or the Purchaser may also settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be Filed with the Bankruptcy Court on or before thirty days after the Effective Date. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' first scheduled omnibus hearing for which such objection is timely Filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

In the event of a dispute regarding: (1) the amount of any Cure Claim, (2) the ability of the Debtors, the Wind-Down Debtor, Purchaser, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed (or assumed and assigned, as applicable), or (3) any other matter pertaining to assumption or assignment, then any disputed Cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made as soon as reasonably practicable following, and in accordance with, the entry of a Final Order of the Bankruptcy Court resolving such dispute or as may be agreed upon by the Debtors, the Wind-Down Debtor, or Purchaser, as applicable, and the counterparty to the Executory Contract or Unexpired Lease, and any such unresolved dispute shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise or assignment of any Executory Contract or Unexpired Lease to the Purchaser and full payment of any applicable Cure pursuant to this Article V.D, or upon and in accordance with any resolution of a Cure

dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty), shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assumed and assigned in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure has been fully paid pursuant to this Article V.D, in the amount and at the time in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty), shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, in the event that any counterparty to an Executory Contract or Unexpired Lease receives a notice of assumption and applicable proposed Cure amount, and disputes the Debtors' proposed Cure amount, such party shall not be required to File a Proof of Claim with respect to such dispute. Any counterparty to an Executory Contract or Unexpired Lease that does not receive a notice or applicable proposed Cure amount, and believes a Cure amount is owed, shall have thirty days after the Effective Date to File a Proof of Claim with respect to such alleged Cure amount, which Claim shall not be expunged until such Cure dispute is resolved.**

#### **E. Insurance Policies**

Each D&O Liability Insurance Policy (including, without limitation, any "tail policy" and all agreements, documents, or instruments related thereto) other than the Side-A Policy shall be assumed, in their entirety, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date, pursuant to sections 105 and 365 of the Bankruptcy Code with the Wind-Down Debtor being authorized to pursue any proceeds thereof on behalf of the Debtors or the Wind-Down Debtor. The Side-A Policy shall ride through these Chapter 11 Cases with the Debtors, and the Wind-Down Debtor preserves all avoidance and other actions in connection with the premium paid thereunder. All beneficiaries under the D&O Insurance Policies reserve their rights under such D&O Insurance Policies subject to the limitations set forth in this Plan.

The Debtors or the Wind-Down Debtor, as applicable, shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policy (including, without limitation, any "tail policy" and all agreements, documents, or instruments related thereto) in effect prior to the Effective Date, and any current and former directors, officers, managers, and employees of the Debtors who served in such capacity at any time before or after the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy subject to the terms thereof regardless of whether such directors, officers, managers, and employees remain in such positions after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Debtors or the Wind-Down Debtor shall retain the ability to supplement such D&O Liability Insurance Policy as the Debtors or Wind-Down Debtor may deem necessary, subject to the prior written consent of the Wind-Down Debtor. Notwithstanding anything to the contrary contained in the Plan, the Wind-Down Debtor shall be entitled to pursue avoidance of the premium paid for the XL Specialty Insurance Company Cornerstone A-Side Management Liability Insurance Policy No. ELU184179-22, and nothing in this Plan shall be deemed a waiver or abrogation of any such rights.

The Debtors shall continue to satisfy their obligations under their insurance policies in full and continue such policies in the ordinary course of business. Each of the Debtors' insurance policies, and any agreements, documents, or instruments relating thereto shall be treated as Executory Contracts under the Plan. On the Effective Date: (a) the Debtors shall be deemed to have assumed all such insurance policies

and any agreements, documents, and instruments relating thereto in their entirety; and (b) such insurance policies and any agreements, documents, or instruments relating thereto shall revert in the applicable Debtors or the Wind-Down Debtor unaltered.

**F. Reservation of Rights**

Nothing contained in the Plan or the Plan Supplement (unless otherwise explicitly provided) shall constitute an admission by the Debtors or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor or the Wind-Down Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Wind-Down Debtor, as applicable, shall have forty-five days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease, including by rejecting such contract or lease effective as of the Confirmation Date.

**G. Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**H. Contracts and Leases Entered into After the Petition Date**

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed under section 365 of the Bankruptcy Code, will be performed by the applicable Debtor or Wind-Down Debtor liable thereunder in the ordinary course of its business. Such contracts and leases that are not rejected under the Plan shall survive and remain unaffected by entry of the Confirmation Order.

**ARTICLE VI.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Timing and Calculation of Amounts to Be Distributed**

Except (1) as otherwise provided herein, (2) upon a Final Order, or (3) as otherwise agreed to by the Debtors, the Purchaser, or the Wind-Down Debtor, as the case may be, and the Holder of the applicable Claim, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the next Distribution Date after such Claim becomes, as applicable, an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim shall receive the full amount of distributions that the Plan provides for Allowed Claims in the applicable Class from the Distribution Agent. In the event that any payment or distribution under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or distribution may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as specifically provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.



**B. Rights and Powers of Distribution Agent**

1. Powers of the Distribution Agent

The Distribution Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties and exercise its rights under the Plan; (b) make all distributions contemplated under the Plan; (c) employ professionals to represent it with respect to its responsibilities and powers; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

2. Expenses Incurred on or after the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Distribution Agent on or after the Effective Date and any reasonable compensation and expense reimbursement claims (including reasonable attorney and/or other professional fees and expenses) made by such Distribution Agent shall be paid in Cash by the Wind-Down Debtor.

**C. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

1. Distributions Generally

Except as otherwise provided in the Plan (including in paragraph 8 below), the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the applicable register or in the Debtors' records as of the date of any such distribution (as applicable), including the address set forth in any Proof of Claim filed by that Holder.

2. Distributions on Account of Obligations of Multiple Debtors

For all purposes associated with distributions under the Plan, all guarantees by any Debtor of the obligations of any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be deemed eliminated so that any obligation that could otherwise be asserted against more than one Debtor shall result in a single distribution under the Plan. Any such Claims shall be subject to all potential objections, defenses, and counterclaims, and to estimation pursuant to section 502(c) of the Bankruptcy Code.

3. Record Date of Distributions

On the Distribution Record Date, the various transfer registers for each Class of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes in the record Holders of any Claims or Interests. The Distribution Agent shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date. In addition, with respect to payment of any Cure amounts or disputes over any Cure amounts, neither the Debtors nor the Distribution Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable Executory Contract or Unexpired Lease as of the Effective Date, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure amount.

4. Special Rules for Distributions to Holders of Disputed Claims and Interests

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the Wind-Down Debtor, on the one hand, and the Holder of a Disputed Claim or Interest, on the other hand, or



as set forth in a Final Order, no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Interest until all of the Disputed Claim or Interest has become an Allowed Claim or Interest or has otherwise been resolved by settlement or Final Order; *provided* that, if the Wind-Down Debtor does not dispute a portion of an amount asserted pursuant to an otherwise Disputed Claim or Interest, the Distribution Agent may make a partial distribution on account of that portion of such Claim or Interest that is not Disputed at the time and in the manner that the Distribution Agent makes distributions to similarly situated Holders of Allowed Claims or Interests pursuant to the Plan. Any dividends or other distributions arising from property distributed to Holders of Allowed Claims or Interests, as applicable, in a Class and paid to such Holders under the Plan shall also be paid, in the applicable amounts, to any Holder of a Disputed Claim or Interest, as applicable, in such Class that becomes an Allowed Claim or Interest after the date or dates that such dividends or other distributions were earlier paid to Holders of Allowed Claims or Interests in such Class.

5. De Minimis Distributions; Minimum Distributions

The Distribution Agent shall not make any Cash distributions to any Holder of an Allowed Claim or Interest pursuant to Article III.C.1-11 of this Plan on account of such Allowed Claim or Interest if such distribution is valued, in the reasonable discretion of the Distribution Agent, at less than \$1.00, and each Holder of an Allowed Claim or Interest to which this limitation applies shall not be entitled to any distributions under the Plan. Notwithstanding anything to the contrary in this Plan, there shall be no minimum distribution threshold on account of distributions of any Cryptocurrency to Holders of Allowed Account Holder Claims and Allowed OpCo General Unsecured Claims.

6. Undeliverable Distributions and Unclaimed Property

In the event that either (a) a distribution to any Holder is returned as undeliverable or (b) the Holder of an Allowed Claim or Interest does not respond to a request by the Debtors or the Distribution Agent for information necessary to facilitate a particular distribution, no distribution to such Holder shall be made unless and until the Distribution Agent has determined the then-current address of such Holder or received the necessary information to facilitate a particular distribution, at which time such distribution shall be made to such Holder without interest, dividends, or other accruals of any kind; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code on the date that is one year after the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Wind-Down Debtor automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable local, state, federal, or foreign escheat, abandoned, or unclaimed property laws to the contrary), and the Claim or Interest of any Holder to such property or interest in property shall not be entitled to any distributions under the Plan.

7. Manner of Payment Pursuant to the Plan

At the option of the Distribution Agent, any Cash payment to be made hereunder may be made by check, wire transfer, automated clearing house, credit card, or as otherwise provided in applicable agreements.

8. Distributions of Net Owed Coins; Additional Bankruptcy Distributions

As a general matter, the Purchaser will allocate each Account Holder's Net Owed Coins to its account on the Binance.US Platform, and each Holder of OpCo General Unsecured Claim's Pro Rata share of the Distributable Cryptocurrency (in Cash) to its account on the Binance.US Platform in accordance with, and subject to, the provisions of Section 6.12 of the Asset Purchase Agreement.

Subject to the terms of the Asset Purchase Agreement, the Purchaser may make Additional Bankruptcy Distributions to Transferred Creditors, including Distributable OpCo Cash and/or other Wind-Down Debtor Assets, corresponding to their Pro Rata shares of such Additional Bankruptcy Distribution (if such Additional Bankruptcy Distribution is in Cryptocurrency, based on the Transferred Cryptocurrency Value of the Cryptocurrency included in such Additional Bankruptcy Distribution), all in accordance with any applicable Post-Bankruptcy Statement (as defined in the Asset Purchase Agreement).

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim does not become a Transferred Creditor prior to the date that is three (3) months following the later of the Closing Date or the date on which the terms and conditions for the Binance.US Platform are made available for such Person to accept (as provided in the Customer Onboarding Protocol), then Purchaser shall convert any Cryptocurrency allocable to such Person into U.S. Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such U.S. Dollars, together with any cash or others assets in respect of such Persons, to the Debtors within five (5) Business Days, for further distribution by the Debtors in accordance with this Plan and the Customer Onboarding Protocol.

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim is located in an Unsupported Jurisdiction (as defined in the Asset Purchase Agreement), then the Net Owed Coins, Distributable Cryptocurrency (in Cash) and Additional Bankruptcy Distributions, if applicable, allocable to such Person shall be handled pursuant to Section 6.12(b) or, if applicable, Section 6.14(d) of the Asset Purchase Agreement.

Purchaser shall have no responsibility to make any distributions other than as contemplated by Sections 6.12 and 6.14 of the Asset Purchase Agreement.

#### **D. Compliance Matters**

In connection with the Plan, to the extent applicable, the Debtors, the Wind-Down Debtor, any Distribution Agent, and any other applicable withholding and reporting agents shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including wind-down a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms that are reasonable and appropriate; *provided* that the Wind-Down Debtor and the Distribution Agent, as applicable, shall request appropriate documentation from the applicable distributees and allow such distributees a reasonable amount of time to respond. The Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

#### **E. Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim, asserted in government issued currency (for the avoidance of doubt, not including any Cryptocurrency) other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using

the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

**F. Claims Paid or Payable by Third Parties**

1. Claims Paid by Third Parties

The Debtors or the Wind-Down Debtor, as applicable, shall reduce a Claim or Interest, and such Claim or Interest (or portion thereof) shall be disallowed without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim or Interest receives a payment on account of such Claim or Interest from a party that is not a Debtor or Wind-Down Debtor (or other Distribution Agent), as applicable, including any payments made in connection with the Sale Transaction. To the extent a Holder of a Claim or Interest receives a distribution on account of such Claim or Interest and receives payment from a party that is not a Debtor or a Wind-Down Debtor (or other Distribution Agent), including payments made in connection with the Sale Transaction, as applicable, on account of such Claim or Interest, such Holder shall, within ten Business Days of receipt thereof, repay, return, or deliver any distribution held by or transferred to the Holder to the applicable Wind-Down Debtor to the extent the Holder's total recovery on account of such Claim or Interest from the third party and under the Plan exceeds the amount of such Claim or Interest as of the date of any such distribution under the Plan. The failure of such Holder to timely repay, return, or deliver such distribution shall result in the Holder owing the applicable Wind-Down Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the ten-Business Day grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim or Interest that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim or Interest has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim or Interest (if and to the extent adjudicated by a court of competent jurisdiction or otherwise settled), then immediately upon such payment, such Claim or Interest may be expunged or reduced on the Claims Register by the Claims, Noticing, and Solicitation Agent to the extent of any such payment without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided herein, payments to Holders of Claims or Interests shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any rights, defenses, or Cause of Action that the Debtors, the Wind-Down Debtor or any other Entity may hold against any other Entity, including insurers, under any policies of insurance, agreements related thereto, or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers under the applicable insurance policies, agreements related thereto, and applicable non-bankruptcy law.

**G. Setoffs and Recoupment**

Except as otherwise expressly provided for herein, each Debtor, the Wind-Down Debtor, or such Entity's designee as instructed by such Debtor, the Wind-Down Debtor, as applicable, may, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as

may be agreed to by the Holder of a Claim, set off against or recoup from an Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature whatsoever that the Debtor or the Wind-Down Debtor, as applicable, may have against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised, settled, or released on or prior to the Effective Date (whether pursuant to the Plan or otherwise). Notwithstanding the foregoing, except as expressly stated in Article VIII of this Plan, neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Debtors or the Wind-Down Debtor of any such Claims, rights, or Causes of Action the Debtors or the Wind-Down Debtor may possess against such Holder.

#### **H. Allocation between Principal and Accrued Interest**

Except as otherwise provided herein, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof and as determined for federal income tax purposes) and second, to the extent the consideration exceeds the principal amount of the Allowed Claims, to the remaining portion of such Allowed Claim if any.

### **ARTICLE VII.**

#### **PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS AND INTERESTS**

##### **A. Disputed Claims Process**

After the Effective Date, the Debtors, the Wind-Down Debtor, and any party-in-interest, shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim or Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim or Interest. If a Holder of a Claim or Interest in Class disputes the amount of their Claim or Interest as listed in the Schedules, the Holder should notify the Debtors or the Wind-Down Debtor of such dispute. If the Debtors and the Holder agree to an amended Claim amount prior to the Effective Date, the Debtors shall file amended Schedules prior to the Effective Date. If between the Confirmation Date and the Effective Date, the dispute cannot be consensually resolved, the Holder may seek (by letter to the Court) to have the claim or interest dispute resolved before the Bankruptcy Court (and, with the consent of the Debtors, before any other court or tribunal with jurisdiction over the parties). After the Effective Date, the creditor may seek to have the claim dispute resolved before the Bankruptcy Court or any other court or tribunal with jurisdiction over the parties.

Notwithstanding anything in this Plan to the contrary: (1) all Claims against the Debtors that result from the Debtors' rejection of an Executory Contract or Unexpired Lease; (2) Claims filed to dispute the amount of any proposed Cure pursuant to section 365 of the Bankruptcy Code; and (3) Claims that the Debtors seek to have determined by the Bankruptcy Court, shall in all cases be determined by the Bankruptcy Court, if not otherwise resolved through settlement with the applicable claimant.

On the Effective Date, the Debtors or Plan Administrator, as applicable, may establish one or more accounts or funds to hold and dispose of certain assets, pursue certain litigation (including the Causes of Action preserved under the Plan or otherwise vesting in the Wind-Down Debtor), and/or satisfy certain

Claims (including Claims that are contingent or have not yet been Allowed). For any such account or fund, the Debtors or the Plan Administrator, as applicable, may take the position that grantor trust treatment applies in whole or in part. To the extent such treatment applies to any such account or fund, for all U.S. federal income tax purposes, the beneficiaries of any such account or fund would be treated as grantors and owners thereof, and it is intended, to the extent reasonably practicable, that any such account or fund would be classified as a liquidating trust under section 301.7701-4 of the Treasury Regulations. Alternatively, any such account or fund may be subject to the tax rules that apply to “disputed ownership funds” under 26 C.F.R. 1.468B-9. If such rules apply, such assets would be subject to entity-level taxation, and the Debtors and the Wind-Down Debtor would be required to comply with the relevant rules.

## **B. Objections to Claims or Interests**

Except as otherwise specifically provided in the Plan, after the Effective Date, the Wind-Down Debtor shall have the sole authority on behalf of the Debtors to: (1) File, withdraw, or litigate to judgment, any objections to Claims or Interests; and (2) settle or compromise any Disputed Claim or Interest without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, the Wind-Down Debtor shall have and retain any and all rights and defenses each such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Article IV.P of the Plan.

Any objections to Claims or Interests shall be Filed on or before the Claims Objection Bar Date. For the avoidance of doubt, any party may object to any Claims or Interests prior to the Claims Objection Bar Date. Further, the Bankruptcy Court may extend the time period to object to Claims or Interests set forth in this paragraph at any time, including before or after the expiration of one hundred eighty days after the Effective Date, in its discretion or upon request by the Debtors or any party in interest.

## **C. Estimation of Claims**

Before or after the Effective Date, the Debtors or the Wind-Down Debtor, as applicable, may (but are not required to), at any time, request that the Bankruptcy Court estimate any Disputed Claim or Interest that is contingent or unliquidated pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any party previously has objected to such Disputed Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under sections 157 and 1334 of the Judicial Code to estimate any such Disputed Claim or Interest, including during the litigation of any objection to any Disputed Claim or Interest or during the pendency of any appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Disputed Claim or Interest that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions) and may be used as evidence in any supplemental proceedings, and the Debtors or the Wind-Down Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Disputed Claim or Interest that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen days after the date on which such Disputed Claim or Interest is estimated.



**D. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, if any portion of a Claim or Interest is a Disputed Claim or Interest, no payment or distribution provided hereunder shall be made on account of such Claim or Interest unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest; *provided* that if only a portion of a Claim or Interest is Disputed, such Claim or Interest shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account of such undisputed amount.

**E. Distributions After Allowance**

To the extent that a Disputed Claim or Interest ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim or Interest in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court Allowing any Disputed Claim or Interest becomes a Final Order, the Distribution Agent shall provide to the Holder of such Allowed Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Allowed Claim or Interest unless required under applicable bankruptcy law.

**F. No Interest**

Unless otherwise specifically provided for herein or by Final Order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims against the Debtors, and no Holder of a Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

**G. Adjustment to Claims and Interests without Objection**

Any Claim or Interest that has been paid, satisfied, amended, superseded, cancelled, or otherwise expunged (including pursuant to the Plan) may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Debtor without the Wind-Down Debtor having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court. Additionally, any Claim or Interest that is duplicative or redundant with another Claim or Interest against the same Debtor may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Debtor without the Wind-Down Debtor having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

**H. Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date.

**I. Disallowance of Claims or Interests**

Any Claims or Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have



been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors or the Wind-Down Debtor, as applicable.

**Except as otherwise provided herein or as agreed to by the Debtors or the Wind-Down Debtor, any and all Proofs of Claim Filed after the Bar Date shall be deemed disallowed and expunged as of the Effective Date subject to the approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.**

#### **J. Amendments to Proofs of Claim**

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Proof of Claim or Proof of Interest may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Wind-Down Debtor, and any such new or amended Proof of Claim or Proof of Interest Filed shall be deemed disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court.

### **ARTICLE VIII.**

#### **EFFECT OF CONFIRMATION OF THE PLAN**

##### **A. Releases by the Debtors**

**Notwithstanding anything contained in the Plan to the contrary, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Debtors, the Wind-Down Debtor, and their Estates, and in each case on behalf of themselves and their respective successors, assigns, and representatives, who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of, the foregoing Entities, from any and all Causes of Action, including any derivative claims, asserted or assertable on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, that the Debtors would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Chapter 11 Cases and related adversary proceedings, the Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date.**

**Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, of the releases described in**

this Article VIII.A by the Debtors, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.A is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to the extent contemplated by Article IV.E and Article IV.F of the Plan, a bar to any of the Debtors or Wind-Down Debtor or their respective Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

Notwithstanding anything to the contrary contained herein, nothing in this Plan shall release, waive, or otherwise limit the (i) rights, duties, or obligations of the Purchaser under the Asset Purchase Agreement or the Definitive Documents and (ii) the Non-Released D&O Claims, but such Non-Released D&O Claims shall remain subject to the limitations contained in Article IV.E and Article IV.F of this Plan.

#### **B. Releases by Holders of Claims and Interests**

Except as expressly set forth in the Plan, effective on the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives, from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of any of the Debtors, that such Entity would have been legally entitled to assert in its own right (whether individually or collectively or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions, or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date, *provided* that nothing in this Article VIII.B shall be construed to release the Released Parties from actual fraud, willful misconduct, or gross negligence as determined by a Final Order.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Article VIII.B, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.B is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to

the extent contemplated by Article IV.F and Article IV.G of the Plan, a bar to any of the Releasing Parties or the Debtors or the Wind-Down Debtor or their respective Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

### **C. Exculpation**

Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor release or the third-party release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is exculpated from any Cause of Action for any act or omission arising on or after the Petition Date and prior to the Effective Date based on the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation or filing, or consummation of the Disclosure Statement, the Plan, the Special Committee Investigation, any Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), except for Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan

### **D. Injunction**

The assets of the Debtors and of the Wind-Down Debtor shall be used for the satisfaction of expense obligations and the payment of Claims and Interests only in the manner set forth in this Plan and shall not be available for any other purpose. All Persons and Entities who have held, hold, or may hold Claims or Interests based upon any act, omission, transaction, or other activity of any kind or nature related to the Debtors, the Wind-Down Debtor, or the Debtors' Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in the Plan or the Confirmation Order, shall be precluded and permanently enjoined on and after the Effective Date from interfering with the use and distribution of the Debtors' assets in the manner contemplated by the Plan.

In addition, as of the Effective Date and subject to the occurrence of the Effective Date, except as otherwise specifically provided in this Plan or the Confirmation Order, all Persons and Entities who have held, hold, or may hold Claims or Interests that are fully satisfied pursuant to the Plan or any Claim or Interest that is subject to the releases and exculpations set forth in Article VIII.B and Article VIII.C of this Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims or Interests, except for the receipt of the payments or distributions that are contemplated by this Plan.

#### **E. Release of Liens**

Except as otherwise provided in the Plan, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan or Confirmation Order on the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or the Wind-Down Debtor, as applicable, and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as requested by the Debtors or Wind-Down Debtor to evidence the release of such Lien, including the execution, delivery, and filing or recording of such documents evidencing such releases. The presentation or filing of the Confirmation Order to or with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

#### **F. OSC and SEC**

Notwithstanding any language to the contrary herein, no provision shall (a) preclude the OSC or the SEC from enforcing its police or regulatory powers; or (b) enjoin, limit, impair or delay the OSC or SEC from commencing or continuing any claims, causes of action, proceeding, or investigations against any non-Debtor person or non-Debtor entity in any forum.

#### **G. Protection against Discriminatory Treatment**

As provided by section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Entity, including Governmental Units, shall discriminate against any Debtor or the Wind-Down Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, any Debtor or the Wind-Down Debtor, or any Entity with which a Debtor or the Wind-Down Debtor has been or is associated, solely because such Debtor or the Wind-Down Debtor was a debtor under chapter 11 of the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

#### **H. Document Retention**

Upon the occurrence of the Effective Date, the Debtors' books and records shall be transferred to the Wind-Down Debtor, which shall continue to preserve all financial books and records, emails, and other financial documents relating to the Debtors' business that are currently in the Debtors' possession. The Wind-Down Debtor shall not destroy or otherwise abandon any such documents or records without providing advance notice to the U.S. Securities and Exchange Commission (c/o Therese Scheuer, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, ScheuerT@SEC.GOV) and seeking further authorization from this Bankruptcy Court. Nothing in this Plan or the Confirmation Order shall affect the obligations of the pre-Effective Date Debtors, the Wind-Down Debtor, and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

## **I. Reimbursement or Contribution**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

## **J. Term of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code, or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. **All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.**

# **ARTICLE IX.**

## **CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

### **A. Conditions Precedent to the Effective Date**

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Article IX.B of the Plan:

1. The Bankruptcy Court shall have entered the Confirmation Order, which shall be in a form and substance reasonably satisfactory to the Debtors and the Committee, and subject to the consent rights of Purchaser under the Asset Purchase Agreement, and such order shall be a Final Order and in full force and effect.
2. The Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan, Definitive Documents, and the Asset Purchase Agreement.
3. Each Definitive Document and each other document contained in any supplement to the Plan, including the Plan Supplement and any exhibits, schedules, amendments, modifications or supplements thereto or other documents contained therein, shall have been executed or Filed, as applicable, in form and substance consistent in all respects with the Plan, and subject to the Purchaser's consent rights under the Asset Purchase Agreement, and shall not have been modified in a manner inconsistent therewith;
4. The Professional Fee Escrow Account shall have been established and funded with Cash in accordance with Article II.B.2 of the Plan.
5. The Wind-Down Reserve shall have been established and funded with Cash in accordance with the Plan.



6. If prior to the Outside Date, the Asset Purchase Agreement shall be in full force and effect and the Sale Transaction shall have been consummated.
7. The Restructuring Transactions shall have been consummated or shall be anticipated to be consummated concurrently with the occurrence of the Effective Date in a manner consistent with the Plan, the Customer Onboarding Protocol, the other Definitive Documents, and the Asset Purchase Agreement, and the Plan shall have been substantially consummated or shall be anticipated to be substantially consummated concurrently with the occurrence of the Effective Date.

**B. Waiver of Conditions Precedent**

The Debtors, with the consent of the Committee and, solely to the extent related to the Asset Purchase Agreement and the Sale Transaction, prior to the Outside Date, the consent of Purchaser, may waive any of the conditions to the Effective Date set forth in Article IX.A of the Plan at any time, without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan.

**C. Effect of Non-Occurrence of Conditions to Consummation**

If the Effective Date does not occur within 120 days after the Confirmation Date, then the Plan will be null and void in all respects, any and all compromises or settlements not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including with respect to the fixing, limiting, or treatment of any Claim or Interest, including, without limitation, the Alameda Loan Facility Claims), shall be deemed null and void, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims, Interests, or Causes of Action held by any Debtor or any other Entity; (2) prejudice in any manner the rights of any Debtor or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity in any respect.

**ARTICLE X.**

**MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

**A. Modification of Plan**

Subject to the limitations and terms contained in the Plan and Purchaser's consent rights under the Asset Purchase Agreement, the Debtors, with the consent of the Committee, reserve the right to (1) amend or modify the Plan before the entry of the Confirmation Order, in accordance with the Bankruptcy Code and the Bankruptcy Rules and (2) after the entry of the Confirmation Order, the Debtors or the Wind-Down Debtor, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein.

**B. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall constitute approval of all modifications or amendments to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.



### **C. Revocation or Withdrawal of Plan**

The Debtors reserve the right, with the consent of the Committee, to revoke or withdraw the Plan with respect to any or all Debtors before the Confirmation Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (1) the Plan will be null and void in all respects; (2) any settlement or compromise not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Classes of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effectuated by the Plan, and any document or agreement executed pursuant to the Plan will be null and void in all respects; and (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity, (b) prejudice in any manner the rights of any Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

## **ARTICLE XI.**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Claims or other Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed or assumed and assigned; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;
4. ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;
5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor or the Estates that may be pending on the Effective Date;
6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts,

instruments, releases, and other agreements or documents created in connection with the Plan; *provided* that the Bankruptcy Court shall not retain jurisdiction over disputes concerning documents contained in the Plan Supplement that have a jurisdictional, forum selection, or dispute resolution clause that refers disputes to a different court;

7. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or an Interest for amounts not timely repaid pursuant to Article VI of the Plan; (b) with respect to the releases, injunctions, and other provisions contained in Article VIII of the Plan, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) anything that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan and the Confirmation Order; or (d) related to section 1141 of the Bankruptcy Code;

11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

13. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

14. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases with respect to any Entity, and resolve any cases, controversies, suits, or disputes that may arise in connection with any Entity's rights arising from or obligations incurred in connection with the Plan;

15. hear and determine matters concerning local, state, federal, and foreign taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

16. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

17. enforce all orders previously entered by the Bankruptcy Court; and

18. hear and determine any other matters related to the Chapter 11 Cases and not inconsistent with the Bankruptcy Code or the Judicial Code.

Nothing herein limits the jurisdiction of the Bankruptcy Court to interpret and enforce the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, or the Disclosure Statement, without regard to whether the controversy with respect to which such

interpretation or enforcement relates may be pending in any state or other federal court of competent jurisdiction.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article XI, the provisions of this Article XI shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

Unless otherwise specifically provided herein or in a prior order of the Bankruptcy Court, the Bankruptcy Court shall have exclusive jurisdiction to hear and determine disputes concerning Claims against or Interests in the Debtors that arose prior to the Effective Date.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Debtor, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, exculpations, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or Interest has voted on the Plan.

#### **B. Additional Documents**

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Wind-Down Debtor, and all Holders of Claims and Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### **C. Payment of Statutory Fees**

All fees and applicable interest payable pursuant to section 1930 of the Judicial Code and 31 U.S.C. § 3717, as applicable, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by each of the Debtors or the Wind-Down Debtor (or the Distribution Agent on behalf of the Wind-Down Debtor) for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first.

#### **D. Dissolution of Statutory Committees**

On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related

to, the Chapter 11 Cases; *provided*, however, that such committees will remain in existence for the limited purposes of (a) pursuing, supporting, or otherwise participating in, any outstanding appeals in the Chapter 11 Cases; and (b) filing, objecting, or otherwise participating in, any final fee applications of Professionals.

#### **E. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests, unless and until the Effective Date has occurred.

#### **F. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of each such Entity.

#### **G. Service of Documents**

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtors or the Wind-Down Debtor shall be served on:

Debtors

**Voyager Digital Holdings, Inc.**

33 Irving Place  
New York, New York 10003  
Attention: David Brosgol  
General Counsel,  
E-mail address: dbrosgol@investvoyager.com

with copies for information only (which shall not constitute notice) to:

Counsel to the Debtors

**Kirkland & Ellis LLP**

**Kirkland & Ellis International LLP**

601 Lexington Avenue  
New York, New York 10022  
Attention: Joshua A. Sussberg, P.C., Christopher Marcus,  
P.C., Christine A. Okike, P.C., and Allyson B. Smith

Counsel to the Committee

**McDermott Will & Emery LLP**

One Vanderbilt Avenue  
New York, New York 10017  
Attention: Darren Azman

#### **H. Entire Agreement; Controlling Document**

Except as otherwise indicated, on the Effective Date, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations with respect to the subject matter of the Plan, all of which will have become merged and integrated into the Plan;

*provided, however,* that notwithstanding the foregoing or anything to the contrary herein, to the extent there is any conflict between the Plan and the Confirmation Order, on the one hand, and the Asset Purchase Agreement, on the other hand, the Asset Purchase Agreement shall govern solely in the event the Sale Transaction is consummated. Except as set forth in the Plan, in the event that any provision of the Disclosure Statement, the Plan Supplement, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

#### **I. Plan Supplement**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Claims, Noticing, and Solicitation Agent at <https://cases.stretto.com/Voyager> or the Bankruptcy Court's website at <http://www.nysb.uscourts.gov>. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

#### **J. Non-Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, subject to the Purchaser's consent rights under the Asset Purchase Agreement prior to the Outside Date, shall have the power to alter and interpret such term or provision to make it valid or enforceable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' consent, consistent with the terms set forth herein; and (3) non-severable and mutually dependent.

#### **K. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors, and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties nor individuals or the Debtors or the Wind-Down Debtor will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan or any previous plan.

**L. Waiver or Estoppel**

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed prior to the Confirmation Date.



Dated: February 28, 2023

VOYAGER DIGITAL HOLDINGS, INC.  
on behalf of itself and all other Debtors

/s/ Stephen Ehrlich

Stephen Ehrlich  
Co-Founder and Chief Executive Officer  
Voyager Digital Holdings, Inc.

Joshua A. Sussberg, P.C.  
 Christopher Marcus, P.C.  
 Christine A. Okike, P.C.  
 Allyson B. Smith (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
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 New York, New York 10022  
 Telephone: (212) 446-4800  
 Facsimile: (212) 446-4900

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF FILING OF THE REVISED  
 ORDER (I) APPROVING THE SECOND AMENDED  
 DISCLOSURE STATEMENT AND (II) CONFIRMING THE THIRD  
 AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND ITS  
 DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

**PLEASE TAKE NOTICE** Debtors hereby file a revised *Order (I) Approving the Second Amended Disclosure Statement and (II) Confirming the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Revised Confirmation Order”), attached hereto as **Exhibit A**. A redline of the Revised Confirmation Order is attached hereto as **Exhibit B**, which reflects changes from the original *Order (I) Approving the Second Amended Disclosure Statement and (II) Confirming the Third*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

*Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1120] filed on February 28, 2023.

**PLEASE TAKE FURTHER NOTICE** that the Debtors reserve the right to materially alter, amend, or modify the Revised Confirmation Order; *provided* that if the Revised Confirmation Order is altered, amended, or modified in any materials respect, the Debtors will file a revised version of such document the United States Bankruptcy Court for the Southern District of New York (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that the hearing at which the Court will consider approval and entry of the Revised Disclosure Statement Order will be held before the Honorable Michael E. Wiles of the United States Bankruptcy Court for the Southern District of New York on **March 2, 2023, at 10:00 a.m. (prevailing Eastern Time).**

**PLEASE TAKE FURTHER NOTICE** that copies of the Revised Confirmation Order and other pleadings filed in the above-captioned chapter 11 cases may be obtained free of charge by visiting the website of Stretto at <http://www.cases.stretto.com/Voyager>. You may also obtain copies of any pleadings by visiting the Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: March 2, 2023  
New York, New York

*/s/ Joshua A. Sussberg*

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**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Joshua A. Sussberg, P.C.

Christopher Marcus, P.C.

Christine A. Okike, P.C.

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*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Revised Confirmation Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER (I) APPROVING THE SECOND AMENDED  
DISCLOSURE STATEMENT AND (II) CONFIRMING THE THIRD  
AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND ITS  
DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Voyager Digital Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”)<sup>2</sup> having:

- a. commenced, on July 5, 2022 (the “Petition Date”), these chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief in the United States Bankruptcy Court for the Southern District of New York (the “Court”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);
- b. continued to operate their business and manage their property during these Chapter 11 Cases as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- c. filed,<sup>3</sup> on July 6, 2022, the *Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 17];
- d. filed, on July 21, 2022, the *Debtors’ Motion Seeking Entry of an Order (I) Approving the Bidding Procedures and Related Dates and Deadlines, (II) Scheduling Hearings and Objection Deadlines with Respect to the Debtors’*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan, the Disclosure Statement, the Asset Purchase Agreement, or the Bankruptcy Code (each as defined herein), as applicable. The rules of interpretation set forth in Article I.B. of the Plan apply.

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in these Chapter 11 Cases, as applicable.



*Sale, Disclosure Statement, and Plan Confirmation, and (III) Granting Related Relief* [Docket No. 126];

- e. obtained, on August 5, 2022, the entry of the *Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Debtors' Sale, Disclosure Statement, and Plan Confirmation and (V) Granting Related Relief* [Docket No. 248] (the "Bidding Procedures Order") approving the *Bidding Procedures for the Submission, Receipt, and Analysis of Bids in Connection with the Sale of the Debtors*, attached to the Bidding Procedures Order as Exhibit 1 (the "Bidding Procedures");
- f. filed, on August 12, 2022, the *First Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 287], the *Disclosure Statement Relating to the First Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 288], and the *Debtors' Motion for Entry of an Order Approving (I) the Adequacy of the Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [Docket No. 289];
- g. commenced, on September 13, 2022, the Auction for the sale of substantially all of the Debtors' assets in accordance with the Bidding Procedures;
- h. closed, on September 26, 2022, the Auction and selected West Realm Shires Inc. ("FTX US") as the Winning Bidder (as defined in the Bidding Procedures);
- i. obtained, on October 20, 2022, entry of the *Order (I) Authorizing Entry of the Asset Purchase Agreement and (II) Granting Related Relief* [Docket No. 581], which authorized entry into that certain asset purchase agreement by and between Voyager Digital, LLC and West Realm Shires Inc. (together with its affiliates, "FTX US," and the asset purchase agreement, the "FTX US Asset Purchase Agreement");
- j. filed, on October 24, 2022, the *Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 590] and the *First Amended Disclosure Statement Relating to the Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 591];
- k. filed, on December 9, 2022, the *Stipulation and Agreed Order* [Docket No. 717] by and between FTX US and the Debtors (the "FTX US APA Stipulation"), terminating the FTX US Asset Purchase Agreement;
- l. filed, on December 21, 2022, the *Debtors' Motion for Entry of an Order (I) Authorizing Entry into the Binance US Purchase Agreement and (II) Granting Related Relief* [Docket No. 775] and that certain asset purchase agreement by and between Voyager Digital, LLC and BAM Trading Services Inc. d/b/a Binance.US

(together with its affiliates, “Binance.US,” and the asset purchase agreement, the “Asset Purchase Agreement”)

- m. filed, on December 22, 2022, the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 777] (as amended, modified, or supplemented from time to time, the “Plan”), the *Second Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 778] (as amended, modified, or supplemented from time to time, the “Disclosure Statement”), and the *Debtors’ Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Adequacy of the Debtors’ Disclosure Statement, (III) Approving (A) Procedures for Solicitation, (B) Forms of Ballots and Notices, (C) Procedures for Tabulation of Votes, and (D) Procedures for Objections, and (IV) Granting Related Relief* [Docket No. 779];
- n. filed, on January 9, 2023, the first amendment to the Asset Purchase Agreement [Docket No. 835];
- o. obtained, on January 10, 2023, approval of the FTX US APA Stipulation [Docket No. 849];
- p. filed, on January 10, 2023, the revised Plan [Docket No. 852];
- q. filed, on January 13, 2023, the revised Disclosure Statement [Docket No. 863];
- r. obtained, on January 13, 2023, entry of the *Order (I) Authorizing Entry into the Asset Purchase Agreement and (II) Granting Related Relief* [Docket No. 775], which granted entry into the asset purchase agreement with Binance.US (the “Asset Purchase Agreement Order”);
- s. obtained, on January 13, 2023, entry of the *Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Adequacy of the Debtors’ Disclosure Statement, (III) Approving (A) Procedures for Solicitation, (B) Forms of Ballots and Notices, (C) Procedures for Tabulation of Votes and (D) Procedures for Objections* [Docket No. 861] (the “Conditional Disclosure Statement Order”) conditionally approving the Disclosure Statement, solicitation procedures (the “Solicitation Procedures”), and solicitation materials, including notices, forms, and ballots (collectively, the “Solicitation Packages”);
- t. caused the Solicitation Packages and notice of the Combined Hearing and the deadline for objecting to the Disclosure Statement and to confirmation of the Plan (“Confirmation”) to be distributed on or before January 25, 2023 (the “Solicitation Date”), in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), the Disclosure Statement Order, and the

Solicitation Procedures, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 926] and the *Supplemental Affidavit of Service* [Docket Nos. 927 and 1016] (collectively, the “Affidavit of Solicitation”);

- u. filed, on February 1, 2023, the *Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* [Docket No. 943] (the “Initial Plan Supplement”) and caused notice of the filing of the Initial Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 951];
- v. published, on February 3, 2023, notice of the Combined Hearing (the “Combined Hearing Notice”) in the *The New York Times* (National Edition) and *Financial Times* (International Edition), as evidenced by the *Affidavits of Publication* [Docket Nos. 954 and 955] (the “Publication Affidavits” and, together with the Affidavit of Solicitation, the “Affidavits”);
- w. filed, on February 8, 2023, the *First Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* [Docket No. 986] (the “First Amended Plan Supplement”) and caused notice of the filing of the First Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 992];
- x. filed, on February 15, 2023, the *Second Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* (the “Second Amended Plan Supplement”) [Docket No. 1006] and caused notice of the filing of the Second Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 1037];
- y. filed, on February 21, 2023, the *Third Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* (the “Third Amended Plan Supplement”) [Docket No. 1035] and caused notice of the filing of the Third Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 1058];
- z. filed, on February 28, 2023, the *Debtors’ Motion for Entry of an Order Approving Joint Stipulation and Agreed Order Between the Voyager Debtors, the FTX Debtors, and Their Respective Official Committees of Unsecured Creditors* [Docket No. 1106] (the “FTX Settlement”);
- aa. filed, on February 28, 2023, the *Declaration of Leticia Sanchez Regarding the Solicitation and Tabulation of Votes on the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1108];

- bb. filed, on February 28, 2023, the *Debtors' Memorandum of Law in Support of (I) Final Approval of the Second Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code and (II) an Order Confirming the Debtors' Third Amended Joint Chapter 11 Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* [Docket No. 1110] (the "Confirmation Brief");
- cc. filed, on February 28, 2023, the *Declaration of Timothy R. Pohl, Independent Director and Member of the Special Committee of the Board of Directors of Voyager Digital, LLC, in Support of Confirmation of the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1111] (the "Pohl Declaration");
- dd. filed, on February 28, 2023, the *Declaration of Brian Tichenor in Support of Confirmation of the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1113] (the "Tichenor Declaration");
- ee. filed, on February 28, 2023, the *Fourth Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* (the "Fourth Amended Plan Supplement") (together with the Initial Plan Supplement, First Amended Plan Supplement, Second Amended Plan Supplement, and Third Amended Plan Supplement, and as may be modified, amended, or supplemented from time to time, the "Plan Supplement") [Docket No. 1115] and will cause notice of the filing of the Fourth Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order; and
- ff. filed, on February 28, 2023, the revised version of the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1117];
- gg. filed, on February 28, 2023, the *Declaration of Mark A. Renzi in Support of Confirmation of the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1119] (the "Renzi Declaration," and, together with the Voting Report, the Pohl Declaration, the Tichenor Declaration, and the Renzi Declaration, the "Declarations");
- hh. filed, on February 28, 2023, the *Notice of Filing of Proposed Findings of Fact, Conclusions of Law, and Order (I) Approving the Second Amended Disclosure Statement and (II) Confirming the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*;

- ii. filed, on March 1, 2023, the revised version of the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1125];
- jj. filed, on March 1, 2023, the *Amended Declaration of Leticia Sanchez Regarding the Solicitation and Tabulation of Votes on the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1127] (the “Voting Report”); and
- kk. filed, on March 2, 2023, the revised version of the *Notice of Filing of Proposed Findings of Fact, Conclusions of Law, and Order (I) Approving the Second Amended Disclosure Statement and (II) Confirming the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (this “Confirmation Order”).

The Court having:

- a. entered the Bidding Procedures Order on August 5, 2022 [Docket No. 248];
- b. entered the Asset Purchase Agreement Order on January 13, 2023 [Docket No. 775];
- c. entered the Conditional Disclosure Statement Order on January 13, 2023 [Docket No. 861];
- d. set February 22, 2023, at 4:00 p.m. (prevailing Eastern Time) as the deadline to object to the Disclosure Statement and the Plan and to object to proposed cure costs and any assumption of an Executory Contract or Unexpired Lease pursuant to the *Schedule of Assumed Executory Contracts and Unexpired Leases* (the “Assumed Contract Schedule”), filed as Exhibit A to the Plan Supplement (the “Plan Objection Deadline”);
- e. set February 22, 2023, at 4:00 p.m. (prevailing Eastern Time) as the deadline for voting on the Plan (the “Voting Deadline”);
- f. set March 2, 2023 at 10:00 a.m. (prevailing Eastern Time) as the date and time for the commencement of the Combined Hearing, pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the Bankruptcy Code;
- g. reviewed the Plan, the Disclosure Statement, the Plan Supplement, the Confirmation Brief, the Declarations, the Voting Report, the Combined Hearing Notice, the Affidavits, and all filed pleadings, exhibits, statements, and comments regarding Confirmation, including all objections, statements, and reservations of rights filed by parties in interest on the docket of the Chapter 11 Cases;
- h. held the Combined Hearing on March 2, 2023 at 10:00 a.m., prevailing Eastern Time;



- i. heard the statements and arguments made by counsel with respect to final approval of the Disclosure Statement and Confirmation of the Plan;
- j. considered all oral representations, live testimony, written direct testimony, designated deposition testimony, exhibits, documents, filings, and other evidence presented at the Combined Hearing;
- k. overruled any and all objections to the Disclosure Statement and the Plan and to Confirmation and all statements and reservations of rights not consensually resolved, agreed to, or withdrawn, unless otherwise indicated; and
- l. taken judicial notice of all papers and pleadings and other documents filed, all orders entered, and all evidence and arguments presented in these Chapter 11 Cases.

NOW, THEREFORE, the Court having found that the notice of the Combined Hearing and the opportunity for any party in interest to object to approval of the Disclosure Statement and confirmation of the Plan were adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated therein, and that the legal and factual bases set forth in the documents filed in support of approval of the Disclosure Statement and confirmation of the Plan and other evidence presented at the Combined Hearing and the record of the Chapter 11 Cases establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Court makes and issues the following findings of fact and conclusions of law, and orders:

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

IT IS DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:

##### **A. Findings and Conclusions.**

1. The findings and conclusions set forth herein and in the record of the Combined Hearing constitute the Court's findings of fact and conclusions of law under rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.



**B. Jurisdiction, Venue, and Core Proceeding.**

2. The Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, entered February 1, 2012. The Court has exclusive jurisdiction to determine whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code and should be approved and confirmed, respectively. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

**C. Eligibility for Relief.**

3. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

**D. Commencement and Joint Administration of the Chapter 11 Cases.**

4. On the Petition Date, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. In accordance with the *Order (I) Directing Joint Administration of the Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 18], these Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. Since the Petition Date, the Debtors have operated their business and managed their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

**E. Appointment of the Committee.**

5. On July 19, 2022, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 106].

**F. Judicial Notice, Objections Overruled.**

6. The Court takes judicial notice of (and deems admitted into evidence for purposes of final approval of the Disclosure Statement and Confirmation of the Plan) the docket of the Chapter 11 Cases maintained by the clerk of the Court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of these Chapter 11 Cases. All objections, statements, informal objections, and reservations of rights not consensually resolved, agreed to, or withdrawn, if any, related to the Disclosure Statement, the Plan, or Confirmation are overruled on the merits unless otherwise indicated in this Confirmation Order.

**G. Conditional Disclosure Statement Order.**

7. On January 13, 2023, the Court entered the Conditional Disclosure Statement Order [Docket No. 861], which, among other things, set (i) February 22, 2023, at 4:00 p.m. (prevailing Eastern Time) as (a) the Plan Objection Deadline and (b) the Voting Deadline and (ii) March 2, 2023, at 10:00 a.m. (prevailing Eastern Time) as the date and time for commencement of the Combined Hearing.

**H. Adequacy of the Disclosure Statement.**

8. The Disclosure Statement contains (a) sufficient information of a kind necessary to satisfy the disclosure requirements of all applicable nonbankruptcy laws, rules, and regulations, including the Securities Act, and (b) “adequate information” (as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein. The filing of the Disclosure Statement with the clerk of the Court satisfied Bankruptcy Rule 3016(b), and the Disclosure Statement, the Plan, and the Solicitation Packages provided all parties-in-interest with

sufficient notice regarding the settlement, release, exculpation, and injunction provisions contained in the Plan in compliance with Bankruptcy Rule 3016(c).

**I. Burden of Proof—Confirmation of the Plan.**

9. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation.

**J. Notice.**

10. The Debtors provided due, adequate, and sufficient notice of the Disclosure Statement, the Conditional Disclosure Statement Order, the Plan, the Plan Supplement, the Solicitation Packages, the Combined Hearing Notice, the proposed assumption and rejection of Executory Contracts and Unexpired Leases and the proposed cure amounts, and all the other materials distributed by the Debtors in connection with Confirmation of the Plan, together with the Plan Objection Deadline, the Voting Deadline, and the Combined Hearing, and any applicable bar dates and hearings described in the Conditional Disclosure Statement Order, in compliance with the Bankruptcy Rules, Local Rules, and the procedures set forth in the Disclosure Statement Order. No other or further notice is or shall be required.

**K. Solicitation.**

11. Prior to the Combined Hearing, the Debtors filed the Voting Report. The Voting Report was admitted into evidence during the Combined Hearing. As described in the Voting Report, the solicitation of votes on the Plan complied with the Solicitation Procedures, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable rules, laws, and regulations.

12. As described in the Voting Report, following the Petition Date, the Solicitation Packages, the Plan Supplement, and the Combined Hearing Notice were transmitted and served, including to all Holders of Claims in Class 3 (Account Holder Claims), Class 4A (OpCo General Unsecured Claims), Class 4B (HoldCo General Unsecured Claims), and Class 4C (TopCo General Unsecured Claims) (collectively, the “Voting Classes”) that held a Claim as of January 10, 2023 (the date specified in such documents for the purpose of solicitation) (the “Voting Record Date”), in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Local Rules, the Disclosure Statement Order, and any applicable nonbankruptcy law. Transmission and service of the Solicitation Packages and the Combined Hearing Notice were timely, adequate, and sufficient. The establishment and notice of the Voting Record Date were reasonable and sufficient. No other or further notice is required.

13. The period during which Holders in the Voting Classes were required to submit acceptances or rejections to the Plan was reasonable and sufficient for such Holders to make an informed decision to accept or reject the Plan.

14. As set forth in the Plan, Holders of Claims in the Voting Classes were eligible to vote on the Plan in accordance with the Solicitation Procedures. Holders of Claims in Class 1 (Secured Tax Claims) and Class 2 (Other Priority Claims) (collectively, the “Presumed Accepting Classes”) are Unimpaired and conclusively presumed to accept the Plan and, therefore, did not vote to accept or reject the Plan. Holders of Claims in Class 7 (Intercompany Claims) and Interests in Class 8 (Intercompany Interests) either are Unimpaired and conclusively presumed to have accepted the Plan (to the extent reinstated) or Impaired and conclusively deemed to have rejected the Plan, and, therefore, are not entitled to vote to accept or reject the Plan. Holders of Claims in

Class 5 (Alameda Loan Facility Claims) and Class 6 (Section 510(b) Claims) and Interests in Class 9 (Existing Equity Claims) (collectively, the “Deemed Rejecting Classes”) are Impaired under the Plan and are deemed to have rejected the Plan. Nevertheless, the Debtors served Holders in such Deemed Rejecting Classes with the Plan, the Disclosure Statement, the Non-Voting Status Notice, and the Combined Hearing Notice.

**L. Voting.**

15. As evidenced by the Voting Report, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Conditional Disclosure Statement Order, and any applicable nonbankruptcy law, rule, or regulation.

16. As evidenced by the Voting Report, Class 3 (Account Holder Claims), Class 4A (OpCo General Unsecured Claims), Class 4B (HoldCo General Unsecured Claims), and Class 4C (TopCo General Unsecured Claims) voted to accept the Plan in accordance with section 1126 of the Bankruptcy Code.

17. Based on the foregoing, and as evidenced by the Voting Report, at least one Impaired Class of Claims (excluding the acceptance by any insiders of any of the Debtors) has voted to accept the Plan in accordance with the requirements of sections 1124 and 1126 of the Bankruptcy Code.

**M. Plan Supplement.**

18. The Plan Supplement complies with the Bankruptcy Code and the terms of the Plan, and the filing and notice of the documents included in the Plan Supplement are adequate and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Conditional Disclosure Statement Order, and the facts and circumstances of the Chapter 11 Cases. No other or further notice is or will be required with respect to the Plan Supplement. All documents included

in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan, compliance with the Bankruptcy Code and the Bankruptcy Rules, and, solely to the extent set forth under the Asset Purchase Agreement, consent of the Purchaser, and in a form reasonably acceptable to the Committee, the Debtors reserve the right to alter, amend, update, or modify the Plan Supplement before the Effective Date.

**N. Modifications to the Plan.**

19. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan since the commencement of Solicitation described or set forth herein constitute technical changes or changes with respect to particular Claims or Interests made pursuant to the agreement of the Holders of such Claims or Interests and do not materially and adversely affect or change the treatment of any other Claims or Interests. Pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that the Holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

20. This Confirmation Order contains modifications to the Plan that were made to address objections and informal comments received from various parties in interest. Modifications to the Plan since the entry of the Conditional Disclosure Statement Order, if any, are consistent with the provisions of the Bankruptcy Code. The disclosure of any Plan modifications prior to or on the record at the Combined Hearing constitutes due and sufficient notice of any and all Plan modifications. The Plan as modified shall constitute the Plan submitted for Confirmation.

**O. Bankruptcy Rule 3016.**

21. The Plan and all modifications thereto are dated and identify the Entities submitting them, thereby satisfying Bankruptcy Rule 3016(a). The Debtors appropriately filed the Disclosure



Statement and the Plan with the Court, thereby satisfying Bankruptcy Rule 3016(b). The injunction, release, and exculpation provisions in the Disclosure Statement and the Plan describe, in bold font and with specific and conspicuous language, all acts to be enjoined and identify the entities that will be subject to the injunction, thereby satisfying Bankruptcy Rule 3016(c).

**P. Compliance with Bankruptcy Code Requirements—Section 1129(a)(1).**

22. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code.

**(i) Proper Classification—Sections 1122 and 1123(a)(1).**

23. The classification of Claims and Interests under the Plan is proper under the Bankruptcy Code. In accordance with sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article III of the Plan provides for the separate classification of Claims and Interests into eleven Classes. Valid business, factual, and legal reasons exist for the separate classification of such Classes of Claims and Interests. The classifications were not implemented for any improper purpose and do not unfairly discriminate between, or among, Holders of Claims or Interests. Each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Accordingly, the Plan satisfies the requirements of sections 1122(a), 1122(b), and 1123(a)(1) of the Bankruptcy Code.

**(ii) Specified Unimpaired Classes—Section 1123(a)(2).**

24. Article III of the Plan specifies that Claims in Class 1 (Secured Tax Claims) and Class 2 (Other Priority Claims) are Unimpaired under the Plan and Claims and Interests in Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests), respectively, are either Impaired or Unimpaired under the Plan.

25. Article III of the Plan specifies that Claims in the following Classes are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code:

<b>Class</b>	<b>Designation</b>
1	Secured Tax Claims
2	Other Priority Claims

26. Additionally, Article II of the Plan specifies that Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, and all fees due and payable pursuant to section 1930 of title 28 of the United States Code before the Effective Date will be paid in full in accordance with the terms of the Plan, although these Claims are not separately classified under the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

**(iii) Specified Treatment of Impaired Classes—Section 1123(a)(3).**

27. The Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code. Article III of the Plan specifies that Claims and Interests, as applicable, in the following Classes (collectively, the “Impaired Classes”) are Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code, and describes the treatment of such Classes.

<b>Class</b>	<b>Designation</b>
3	Account Holder Claims
4A	OpCo General Unsecured Claims
4B	HoldCo General Unsecured Claims
4C	TopCo General Unsecured Claims
5	Alameda Loan Facility Claims
6	Section 510(b) Claims
9	Existing Equity Interests

**(iv) No Discrimination—Section 1123(a)(4).**

28. The Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors for each Claim or Interest in each

respective Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest.

**(v) Adequate Means for Plan Implementation—Section 1123(a)(5).**

29. The Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code. The provisions in Article IV and elsewhere in the Plan and the Plan Supplement, and in the exhibits and attachments to the Disclosure Statement provide, in detail, adequate and proper means for the Plan's implementation, including the: (a) effectuation of the Restructuring Transactions contemplated by the Plan, the Restructuring Transactions Memorandum, and the Customer Onboarding Protocol; (b) consummation of the Sale Transaction by the Outside Date pursuant to the Asset Purchase Agreement; (c) if the Sale Transaction is not consummated by the Outside Date pursuant to the Asset Purchase Agreement, then the effectuation of the Liquidation Transaction in accordance with the Liquidation Procedures; (d) adoption and implementation of the Employee Transition Plan; (e) retention of certain Claims or Causes of Action held by the Debtors or their Estates, which shall be assigned and transferred to the Wind-Down Debtor after the Effective Date; (f) effectuation of the terms of the D&O Settlement; (g) authorization for the Debtors and the Wind-Down Debtor, as applicable, to take all actions as may be necessary or appropriate to effectuate the Restructuring Transactions and any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan; (h) establishment of the Wind-Down Debtor pursuant to the Plan Administrator Agreement and the transfer of the Wind-Down Debtor Assets to the Wind-Down Debtor after the Effective Date; (i) the funding and sources of consideration for the Plan distributions; and (j) settlement, satisfaction, and compromise of Claims and Interests as set forth in the Plan.

(vi) **Voting Power of Equity Securities—Section 1123(a)(6).**

30. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of nonvoting equity securities. On the Effective Date the Wind-Down Debtor Assets shall, subject to the Plan Administrator Agreement, be transferred to and vest in the Wind-Down Debtor. The Wind-Down Debtor shall be managed by the Plan Administrator and shall be subject to a Wind-Down Debtor Oversight Committee. The Plan Administrator shall be responsible for, among other things: (a) implementing the Wind-Down Debtor, and making distributions contemplated by the Plan; (b) marshalling, marketing for sale, and winding down any of the Debtors' assets constituting Wind-Down Debtor Assets; (c) appointing an independent director at each Debtor to act as a fiduciary for such Debtor entity in connection with the resolution of the Intercompany Claims; (d) overseeing the accounts of the Debtors and the Wind-Down Debtor and the wind-down and dissolution of the Debtors and the Wind-Down Debtor, including effectuating the transactions described in the Restructuring Transactions Memorandum; (e) receiving, maintaining, conserving, supervising, prosecuting, collecting, settling, managing, investing, protecting, and where appropriate, causing the Wind-Down Debtor to abandon the Wind-Down Debtor Assets, including causing the Wind-Down Debtor to invest any moneys held as Wind-Down Debtor Assets; (f) opening and maintaining bank accounts on behalf of or in the name of the Debtors or the Wind-Down Debtor, including, in the Plan Administrator's discretion, separate bank accounts for each of the Debtors; (g) entering into any agreement or executing any document or instrument required by or consistent with the Plan, this Confirmation Order, or the Plan Administrator Agreement, and to perform all obligations thereunder; (h) collecting and liquidating all Wind-Down Debtor Assets, including the sale of any Wind-Down Debtor Assets; (i) protecting and enforcing the rights to the Wind-Down Debtor Assets (including any Vested Causes of Action and Contributed Third-Party Claims) vested in the

Wind-Down Debtor and Plan Administrator by the Plan Administrator Agreement by any method deemed appropriate, including, without limitation, by judicial proceedings or otherwise; (j) investigating any Wind-Down Debtor Assets, and any other potential Vested Causes of Action and Contributed Third-Party Claims; (k) reviewing, reconciling, compromising, settling, objecting, or prosecuting Claims or Interests of any kind; (l) seeking the examination of any Person pursuant to Federal Rule of Bankruptcy Procedure 2004; (m) retaining professionals, disbursing agents, and other agents, independent contractors, and third parties pursuant to the Plan Administrator Agreement and paying the reasonable compensation thereof; (n) paying all lawful expenses, debts, charges, taxes, and other liabilities, and making all other payments relating to the Wind-Down Debtor Assets, solely out of Wind-Down Debtor Assets; (o) prosecuting and settling the Vested Causes of Action, including, without limitation, the 3AC Claims, FTX Claims, Alameda Claims, Contributed Third-Party Claims, and any causes of action not included in the Asset Purchase Agreement or released under the Plan; (p) reviewing, reconciling, pursuing, commencing, prosecuting, compromising, settling, dismissing, releasing, waiving, withdrawing, abandoning, resolving, or electing not to pursue all Vested Causes of Action and Contributed Third-Party Claims; (q) acquiring litigation and other claims related to the Debtors, and prosecuting such claims; (r) reviewing and compelling turnover of the Debtors or the Wind-Down Debtor's property; (s) calculating and making all Distributions to the holders of Allowed Claims against each Debtor and, solely to the extent of payment in full of Allowed Claims, to holders of Allowed Interests, as provided for in, or contemplated by, the Plan and the Plan Administrator Agreement; *provided* that because the Plan does not substantively consolidate the Debtors' Estates, the Plan Administrator shall make Distributions from the Wind-Down Debtor Assets to the holders of Claims and Interests (if applicable) against that specific Debtor; (t) establishing, administering,

adjusting, and maintaining the Wind-Down Reserve and the Disputed Claims Reserve; (u) withholding from the amount distributable to any Person the maximum amount needed to pay any tax or other charge that the Plan Administrator has determined, based upon the advice of his agents or professionals, may be required to be withheld from such Distribution under the income tax or other laws of the United States or of any state or political subdivision thereof; (v) in reliance upon the Debtors' Schedules, the official Claims Register maintained in the Chapter 11 Cases and the Debtors' filed lists of equity security holders, reviewing, and where appropriate, allowing or objecting to Claims and (if applicable) Interests, and supervising and administering the commencement, prosecution, settlement, compromise, withdrawal, or resolution of all objections to Disputed Claims and (if applicable) Disputed Interests required to be administered by the Wind-Down Debtor; (w) making all tax withholdings, filing tax information returns, filing and prosecuting tax refunds claims, making tax elections by and on behalf of the Debtors or the Wind-Down Debtor, and filing tax returns for the Debtors or the Wind-Down Debtor pursuant to and in accordance with the Plan, and paying taxes, if any, payable for and on behalf of the Debtors or the Wind-Down Debtor, as applicable; *provided, however*, that notwithstanding any other provision of the Plan Administrator Agreement, the Plan Administrator shall not have any responsibility or personal liability in any capacity whatsoever for the signing or accuracy of the Debtors' income tax returns that are due to be filed after the Effective Date or for any tax liability related thereto; (x) abandoning or donating to a charitable organization qualifying under IRC section 501(c)(3) any Wind-Down Debtor Assets that the Plan Administrator determines to be too impractical to distribute or of inconsequential value; (y) seeking a determination of tax liability or refund under Bankruptcy Code section 505; (z) establishing reserves for taxes, assessments, and other expenses of administration of the Debtors or the Wind-Down Debtor as may be necessary



and appropriate for the proper operation of matters incident to the Debtors or the Wind-Down Debtor; paying Wind-Down Debtor Expenses; (aa) if the Plan Administrator deems appropriate in the Plan Administrator's sole discretion, seeking to establish a bar date for filing proofs of Interest in any Debtor or otherwise to determine the holders and extent of Allowed Interests in any Debtor; (bb) purchasing and carrying all insurance policies that the Plan Administrator deems reasonably necessary or advisable and paying all associated insurance premiums and costs; (cc) undertaking all administrative functions remaining in the Chapter 11 Cases to the extent necessary to carry out the Debtors', the Wind-Down Debtor's, or the Plan Administrator's duties under the Plan, including reporting and making required payments of fees to the U.S. Trustee and overseeing the closing of the Chapter 11 Cases; (dd) retaining, terminating, appointing, hiring, or otherwise employees, personnel, management, and directors at any of the Debtors to the extent necessary to carry out the purposes of the Plan Administrator Agreement and the Plan, including, without limitation, to address any disputes between the Debtors; (ee) exercising, implementing, enforcing, and discharging all of the terms, conditions, powers, duties, and other provisions of the Plan, the Confirmation Order, and the Plan Administrator Agreement; and (ff) taking all other actions consistent with the provisions of the Plan and the Plan Administrator Agreement that the Plan Administrator deems reasonably necessary or desirable to administer the Debtors and the Wind-Down Debtor. Further, on or prior to the Effective Date, the Wind-Down Debtor's organizational documents will be amended to prohibit the issuance of non-voting equity securities. Accordingly, the Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

**(vii) Directors and Officers—Section 1123(a)(7).**

31. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. Article IV.J of the Plan provides that, upon filing of the certificate of dissolution (or equivalent document), the Wind-Down Debtor will be dissolved. Article IV.H of the Plan provides for the

formation of the Wind-Down Debtor for the benefit of the Wind-Down Debtor Beneficiaries. The Wind-Down Debtor shall be managed by the Plan Administrator and shall be subject to a Wind-Down Debtor Committee. The selection of the Plan Administrator by the Committee, in consultation with the Debtors, is consistent with the interests of Holders of Claims and Interests and public policy. The appointment of the Plan Administrator identified in the Plan Supplement is approved, and the Plan Administrator's duties shall commence as of the Effective Date. In accordance with the Plan Administrator Agreement, the Plan Administrator shall serve in such capacity through the earlier of (i) the date on which the Wind-Down Debtor is dissolved in accordance with the Plan Administrator Agreement, and (ii) the date on which the Plan Administrator resigns, is terminated, or is otherwise unable to serve; *provided, however*, that, in the event that the Plan Administrator resigns, is terminated, or is otherwise unable to serve, the Wind-Down Debtor Oversight Committee shall appoint a successor to serve as the Plan Administrator in accordance with the Plan Administrator Agreement. If the Wind-Down Debtor Oversight Committee does not appoint a successor within the time periods specified in the Plan Administrator Agreement, then the Court, upon the motion of any party-in-interest, including counsel to the Wind-Down Debtor, shall approve a successor to serve as the Plan Administrator. Accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

**(viii) Impairment / Unimpairment of Classes—Section 1123(b)(1).**

32. The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. Article III of the Plan leaves each Class of Claims and Interests Impaired or Unimpaired.

**(ix) Treatment of Executory Contracts and Unexpired Leases—Section 1123(b)(2).**

33. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. Article V of the Plan provides that, on the Effective Date, except as otherwise provided in the Plan, each

Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with Confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy other than the Side-A Policy. Each of the Debtors' determinations regarding the assumption and rejection of Executory Contracts and Unexpired Leases is based on and within the sound business judgment of the Debtors, is necessary to the implementation of the Plan, and is in the best interests of the Debtors, their Estates, Holders of Claims and Interests, and other parties in interest in these Chapter 11 Cases.

**(x) Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action—Section 1123(b)(3).**

34. The Plan is consistent with section 1123(b)(3) of the Bankruptcy Code. Except as otherwise provided in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies settled, compromised, satisfied, or otherwise resolved pursuant to the Plan. The Plan is deemed a

motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of this Confirmation Order constitutes the Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as well as a finding that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

**(xi) Additional Plan Provisions—Section 1123(b)(6).**

35. The other discretionary provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code.

**Q. Debtor Compliance with the Bankruptcy Code—Section 1129(a)(2).**

36. The Debtors have complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court, and thus, satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

- a. is an eligible debtor under section 109, and a proper proponent of the Plan under section 1121(a), of the Bankruptcy Code; and
- b. complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, the Bankruptcy Rules, the Local Rules, any applicable nonbankruptcy law, rule and regulation, the Conditional Disclosure Statement Order, and all other applicable law, in transmitting the Solicitation Packages and related documents and notices, and in soliciting and tabulating the votes on the Plan.

**R. Plan Proposed in Good Faith—Section 1129(a)(3).**

37. The Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code. The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In so

determining, the Court has examined the totality of the circumstances surrounding the filing of these Chapter 11 Cases, the Plan itself, the process leading to Confirmation, including the support of Holders of Claims and Interests for the Plan, and the transactions to be implemented pursuant thereto. These Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to implement the Restructuring Transactions and maximize the value of the Estates and the recoveries of Holders of Claims and Interests.

**S. Payment for Services or Costs and Expenses—Section 1129(a)(4).**

38. The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

**T. Directors, Officers, and Insiders—Section 1129(a)(5).**

39. Because the Plan provides for the winding down and dissolution of the Debtors, section 1129(a)(5) of the Bankruptcy Code does not apply to the Debtors. To the extent section 1129(a)(5) applies to the Wind-Down Debtor, the requirements of this provision are satisfied by, among other things, disclosing the identity and terms of compensation of the Plan Administrator and the Wind-Down Debtor Oversight Committee.

**U. No Rate Changes—Section 1129(a)(6).**

40. Section 1129(a)(6) of the Bankruptcy Code is not applicable to these Chapter 11 Cases. The Plan does not propose any rate change subject to the jurisdiction of any governmental regulatory commission.

**V. Best Interest of Creditors—Section 1129(a)(7).**

41. The Plan is in the best interests of the Debtors' creditors and satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis attached to

the Disclosure Statement and the other evidence related thereto in support of the Plan that was proffered or adduced in the Declarations or at, prior to, or in connection with the Combined Hearing: (a) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that Holders of Allowed Claims and Interests in each Class will recover at least as much under the Plan on account of such Claim or Interest, as of the Effective Date, as such Holder would receive if the Debtors were liquidated, on the Effective Date, under chapter 7 of the Bankruptcy Code.

**W. Acceptance by Certain Classes—Section 1129(a)(8).**

42. Class 1 (Secured Tax Claims) and Class 2 (Other Priority Claims) are Unimpaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 3 (Account Holder Claims), Class 4A (OpCo General Unsecured Claims), Class 4B (HoldCo General Unsecured Claims), and Class 4C (TopCo General Unsecured Claims) are impaired under the Plan and voted to accept the Plan. Class 5 (Alameda Loan Facility Claims), Class 6 (Section 510(b) Claims), and Class 9 (Existing Equity Holders) are impaired under the Plan and are deemed to reject the Plan. Because the Plan has not been accepted by the Deemed Rejecting Classes, the Debtors seek Confirmation under section 1129(b), solely with respect to the Deemed Rejecting Classes, rather than section 1129(a)(8) of the Bankruptcy Code. Although section 1129(a)(8) has not been satisfied with respect to the Deemed Rejecting Classes, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to the Deemed Rejecting Classes and thus satisfies section 1129(b) of the Bankruptcy



Code with respect to such Classes as described further below. As a result, the requirements of section 1129(b) of the Bankruptcy Code are satisfied.

**X. Treatment of Claims Entitled to Priority Under Section 507(a) of the Bankruptcy Code—Section 1129(a)(9).**

43. The treatment of Allowed Administrative Claims, Allowed Professional Fee Claims, and Allowed Priority Tax Claims under Article II of the Plan, and of Allowed Other Priority Claims under Article III of the Plan, satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code.

**Y. Acceptance by At Least One Impaired Class—Section 1129(a)(10).**

44. The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced by the Voting Report, the Voting Classes voted to accept the Plan by the requisite numbers and amounts of Claims, determined without including any acceptance of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code), specified under the Bankruptcy Code.

**Z. Feasibility—Section 1129(a)(11).**

45. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The evidence supporting the Plan proffered or adduced by the Debtors at or before the Combined Hearing: (a) is reasonable, persuasive, credible, and accurate as of the dates such evidence was prepared, presented, or proffered; (b) has not been controverted by other persuasive evidence; (c) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization; (d) establishes that the Distribution Agent, or the Wind-Down Debtor, as applicable, will have sufficient funds available to meet their obligations under the Plan—including sufficient amounts of Cash, Cryptocurrency, or other consideration, as applicable, to reasonably ensure payment of, among other things, Allowed Administrative Claims,

Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Account Holder Claims, and Allowed General Unsecured Claims, as applicable, pursuant to the terms of the Plan and in accordance with section 507(a) of the Bankruptcy Code; and (e) establishes that the Wind-Down Debtor will have the financial wherewithal to satisfy their obligations following the Effective Date.

**AA. Payment of Statutory Fees—Section 1129(a)(12).**

46. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Article XII.C of the Plan provides for the payment of all fees due and payable under 28 U.S.C. § 1930 by each of the Wind-Down Debtor (or the Distribution Agent on behalf of the Wind-Down Debtor).

**BB. Continuation of Employee Benefits—Section 1129(a)(13).**

47. The Debtors do not have any remaining obligations to pay retiree benefits (as defined in section 1114 of the Bankruptcy Code). Therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases or the Plan.

**CC. Non-Applicability of Certain Sections—Sections 1129(a)(14), (15), and (16).**

48. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals, and are not nonprofit corporations.

**DD. “Cram Down” Requirements—Section 1129(b).**

49. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code. Notwithstanding the fact that the Deemed Rejecting Classes have not accepted the Plan, the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code. *First*, all of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met. *Second*, the Plan is fair and equitable with respect to Class 5 (Alameda Loan Facility Claims),

Class 6 (Section 510(b) Claims), and Class 9 (Existing Equity Interests). The Plan has been proposed in good faith, is reasonable, and meets the requirements that (a) no Holder of any Claim or Interest that is junior to each such Class will receive or retain any property under the Plan on account of such junior Claim or Interest, and (b) no Holder of a Claim or Interest in a Class senior to such Classes is receiving more than payment in full on account of its Claim or Interest. Specifically, to the extent Class 8 (Intercompany Interests) are Reinstated, such treatment is provided for administrative convenience and efficiency, and not on account of such Interests, and will not alter the treatment provided for any other Holder of any Claim or Interest. Further, Class 7 (Intercompany Claims) will receive the treatment as determined by the Court. Accordingly, the Plan is fair and equitable towards all Holders of Claims and Interests in the Deemed Rejecting Classes. *Third*, the Plan does not discriminate unfairly with respect to the Deemed Rejecting Classes because similarly situated Claim and Interest Holders will receive substantially similar treatment on account of their Claims or Interests, as applicable, in such class. Therefore, the Plan may be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

**EE. Only One Plan—Section 1129(c).**

50. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan is the only chapter 11 plan filed in each of these Chapter 11 Cases.

**FF. Principal Purpose of the Plan—Section 1129(d).**

51. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act.

**GG. Not Small Business Cases—Section 1129(e).**

52. The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code does not apply to the Chapter 11 Cases.

**HH. Good Faith Solicitation—Section 1125(e).**

53. The Debtors have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to support and consummation of the Plan, including the solicitation and receipt of acceptances of the Plan, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

**II. Satisfaction of Confirmation Requirements.**

54. Based on the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code.

**JJ. Likelihood of Satisfaction of Conditions Precedent to the Effective Date.**

55. Each of the conditions precedent to the Effective Date, as set forth in Article IX.A of the Plan, has been or is reasonably likely to be satisfied or, as applicable, waived in accordance with Article IX.B of the Plan.

**KK. Implementation.**

56. All documents and agreements necessary to implement the transactions contemplated by the Plan, including those contained or summarized in the Plan Supplement, and all other relevant and necessary documents (including the Asset Purchase Agreement) have been negotiated in good faith and at arm’s length, are in the best interests of the Debtors, and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal, state, or local law. The Debtors are authorized to take any action reasonably necessary or appropriate to consummate such agreements and the transactions contemplated thereby.

**LL. Executory Contracts and Unexpired Leases.**

57. The Debtors' decisions to assume or reject certain Executory Contracts and Unexpired Leases, as provided in Article V of the Plan and in the Plan Supplement, are reasonable exercises of the Debtors' business judgment. The Debtors have demonstrated adequate assurance of future performance of the assumed Executory Contracts and Unexpired Leases within the meaning of section 365(b)(1)(C) of the Bankruptcy Code by the Wind-Down Debtor.

58. Except with respect to the Executory Contracts and Unexpired Leases discussed in the following paragraph of this Confirmation Order, the amounts set forth in the Plan Supplement (the "Cure Amounts") are the sole amounts necessary to be paid upon assumption of the associated Executory Contracts and Unexpired Leases under section 365(b)(1)(A) and (B) of the Bankruptcy Code, and the payment of such amounts will effect a cure of all defaults existing under such Executory Contracts and Unexpired Leases and compensate the counterparties to such Executory Contracts and Unexpired Leases for any actual pecuniary loss resulting from all defaults existing under such Executory Contracts and Unexpired Leases as of the Effective Date.

59. The objections of counterparties to the assumption of their Executory Contracts and Unexpired Leases, to the extent that such objection was timely raised in accordance with Article V.C of the Plan, are preserved and will be considered by the Court at a date and time to be scheduled. As provided in the Conditional Disclosure Statement Order and the Solicitation Packages, the Debtors and the Wind-Down Debtor have reserved the right to (a) add any Executory Contract or Unexpired Lease to the Assumed Contract Schedule and assume such Executory Contract or Unexpired Lease pursuant to the terms of the Plan, or remove any Executory Contract or Unexpired Lease from the Assumed Contract Schedule, in each case, up until the Effective Date and (b) contest any Claim asserted in connection with rejection of any Executory Contract or Unexpired Lease.

**MM. Disclosure of Facts.**

60. The Debtors have disclosed all material facts regarding the Plan, including with respect to consummation of the Sale Transaction and the Liquidation Transaction, as applicable.

**NN. Appropriate Exercise of Business Judgment.**

61. The Debtors' decision to effectuate the Sale Transaction or the Liquidation Transaction, as applicable, is an appropriate exercise of their business judgment.

**OO. Good Faith.**

62. The Debtors, the Released Parties, and the Releasing Parties have been and will be acting in good faith if they proceed to: (a) consummate the Plan and the agreements, settlements, transactions, and transfers contemplated thereby; and (b) take the actions authorized and directed by this Confirmation Order to wind-down the Debtors' businesses and effect the Sale Transaction or the Liquidation Transaction, as applicable, and the other Restructuring Transactions. The Released Parties have made a substantial contribution to these Chapter 11 Cases.

**PP. Essential Elements of the Plan.**

63. The Sale Transaction is an essential element of the Plan, and consummation of the Sale Transaction is in the best interests of the Debtors, their estates, and their creditors. The Debtors have exercised sound business judgment in selecting the Purchaser and the Debtors have done so without collusion and in good faith. The Purchaser is consummating the Sale Transaction in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code. The Purchaser has proceeded in good faith and without collusion in all respects in connection with the Sale Transaction. The Purchaser is therefore entitled to all of the protections afforded under section 363(m) of the Bankruptcy Code, and the Sale Transaction, to the extent consummated, may not be avoided pursuant to section 363(n) of the Bankruptcy Code.



64. The Debtors' marketing process with respect to the Sale Transaction afforded a full, fair, and reasonable opportunity for any party to make a higher or otherwise better offer. No other party or parties has offered to purchase the Acquired Assets for greater overall value to the Debtors' Estates than the Purchaser. The Asset Purchase Agreement will provide a greater recovery for the Debtors' Estates than would be provided by any other available alternative. The Debtors' determination that the Sale Transaction is the most value-maximizing transaction is a valid and sound exercise of the Debtors' business judgment. Consummation of the Sale Transaction is in the best interests of the Debtors' Estates, their creditors, and other parties in interest.

65. The consideration provided by the Purchaser pursuant to the Asset Purchase Agreement (a) is fair and reasonable, (b) constitutes the best offer for the Acquired Assets, and (c) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code) and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

66. The Purchaser is not a mere continuation or substantial continuation of the Debtors or their Estates and there is no continuity of enterprise or common identity between the Purchaser and any of the Debtors. The Purchaser is not holding itself out to the public as a continuation of any of the Debtors. The Purchaser is not a successor to the Debtors or their Estates by reason of any theory of law or equity, and the Sale Transaction does not amount to a consolidation, merger, or de facto merger of the Purchaser with or into any of the Debtors. The Purchaser has entered into the Asset Purchase Agreement in material reliance on and with fair consideration provided for the Sale Transaction being free and clear of all claims and interests relating to the Debtors arising

prior to the closing of the Sale Transaction, including any successor or vicarious liabilities of any kind or nature, as set forth herein and in the Asset Purchase Agreement, and would not have entered into the Asset Purchase Agreement or the Sale Transaction without such terms and the findings herein.

67. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtors may sell, and upon the Closing of the Sale Transaction shall be deemed to have sold, assets and property pursuant to the Asset Purchase Agreement free and clear of any claims, liens, encumbrances, or other interests of any kind or nature whatsoever other than as expressly provided under the Asset Purchase Agreement. In addition to and without limiting the foregoing, the proposed Sale Transaction is to be consummated under the Plan, and the assets and property to be sold pursuant to the Sale Transaction are dealt with by the Plan; therefore, except as expressly provided under the Asset Purchase Agreement, the Debtors may sell, and upon the Closing of the Sale Transaction shall be deemed to have sold, assets and property pursuant to the Asset Purchase Agreement free and clear of any claims, liens, encumbrances, or other interests of any kind or nature whatsoever pursuant to section 1141(c) of the Bankruptcy Code.

68. The Debtors may sell, and upon the Closing of the Sale Transaction shall be deemed to have sold, such assets free and clear of all claims, liens, encumbrances, and other interests of any kind or nature whatsoever (other than as expressly permitted under the Asset Purchase Agreement) because, in each case, one or more of the standards set forth in sections 363(f)(1)–(5), 1129(b)(2)(A)(ii), 1141(a), or 1141(c) of the Bankruptcy Code has been satisfied. All holders of such claims, liens, encumbrances, or other interests against the Debtors, their Estates, or any of the assets subject to the Sale Transaction (a) who did not object, or who withdrew their objections, to the Sale Transaction are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy

Code and (b) are bound by the Plan pursuant to section 1141(a) of the Bankruptcy Code. All holders of such claims, liens, encumbrances, or other interests are adequately protected by having their claims, liens, encumbrances, or other interests, if any, in each instance against the Debtors, their Estates, or any of the assets subject to the Sale Transaction, attach to the proceeds of the Sale Transaction ultimately attributable to the assets in which such creditor alleges a claim, lien, encumbrance, or other interest, in the same order of priority, with the same validity, force, and effect that such claim, lien, encumbrance, or other interest had prior to consummation of the Sale Transaction, subject to any claims and defenses the Debtors and their Estates may possess with respect thereto, and with such claims, liens, encumbrances, or other interests being treated in accordance with the Plan.

69. Article VIII.A of the Plan describes certain releases granted by the Debtors, the Wind-Down Debtor, and the Debtors' and the Wind-Down Debtor's Estates (the "Debtor Release"). The Debtors have satisfied the business judgment standard with respect to the propriety of the Debtor Release. Such release is a necessary and integral element of the Plan, and is fair, reasonable, and in the best interests of the Debtors, the Debtors' Estates, and Holders of Claims and Interests. The Debtors', the Wind-Down Debtor's and their Estates' pursuit of any such claims against the Released Parties is not in the best interests of the Estates' various constituencies because the costs involved would likely outweigh any potential benefit from pursuing such claims. Additionally, including for the reasons set forth in the Declarations, the Debtor Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties following extensive, arm's-length negotiations between sophisticated parties represented by able counsel; (b) a good-faith settlement and compromise of such Causes of Action released by the Debtor Release, which bore a substantial likelihood of complex and protracted litigation, with attendant

expense, inconvenience, and delay; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; (f) a sound exercise of the Debtors' business judgment; and (g) except to the extent contemplated by Article IV.F of the Plan, a bar to any of the Debtors, the Wind-Down Debtor or their Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

70. Article IV.G of the Plan describes the D&O Settlement. The D&O Settlement constitutes a good-faith compromise and settlement of all Claims, Causes of Action, disputes, and controversies released, settled, compromised, or otherwise resolved between the Debtors and the CEO and CCO. The D&O Settlement is fair, equitable, and reasonable and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests.

71. Article VIII.B of the Plan describes certain releases granted by the Releasing Parties (the "Third-Party Release"). The Third-Party Release provides finality for the Debtors, the Wind-Down Debtor, and the other Released Parties. The Third-Party Release is consensual with respect to the Releasing Parties. The Combined Hearing Notice sent to Holders of Claims and Interests and published in *The New York Times* (National Edition) and the *Financial Times* (International Edition) on February 3, 2023, and the ballots and notices, as applicable, sent to Holders of Claims and Interests unambiguously stated that the Plan contains the Third-Party Release and that each Holder of Claims or Interests may elect not to grant such Third-Party Release. Such release provisions of the Plan were conspicuous, emphasized with boldface type in the Plan, the Disclosure Statement, and the ballots and notices. Among other things, the Plan provides appropriate and specific disclosure with respect to the claims and Causes of Action that are subject to the Third-Party Release, and no other disclosure or notice is necessary. The Third-

Party Release is a necessary and integral element of the Plan, and is fair, equitable, reasonable, and in the best interests of the Debtors, the Debtors' Estates, and all Holders of Claims and Interests. Also, the Third-Party Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good-faith settlement and compromise of such the Claims released by the Third-Party Releases; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; (f) a sound exercise of the Debtors' business judgment; and (g) except to the extent contemplated by Article IV.E and Article IV.F of the Plan, a bar to any of the Debtors or Wind-Down Debtor or their respective Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

72. The Third-Party Releases are consensual and those Holders of Claims and Interests who are bound by the Third-Party Releases voluntarily opted-in to the Third-Party Releases. The Plan does not release any third party's direct claims against non-Debtors (to the extent such direct claims exist) without such third party's express consent. Holders of Claims and Interests also had the ability to affirmatively elect to "contribute" their claims to the Wind-Down Debtor and vest the Wind-Down Debtor with authority to pursue such claims against the Debtors.

73. The exculpation described in Article VIII.C of the Plan (the "Exculpation") is appropriate under applicable law because it was proposed in good faith, was formulated following extensive good-faith, arm's-length negotiations with key constituents, and is appropriately limited in scope. Without limiting anything in the Exculpation, each Exculpated Party has participated in these Chapter 11 Cases in good faith and, except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated as set forth in the Plan; *provided* that the foregoing "Exculpation" shall have no effect on the

liability of any entity that results from any such act or omission that is determined by a Final Order to have constituted actual fraud, gross negligence, or willful misconduct, but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in any and all activities potentially underlying any Exculpated Claim in good faith and in compliance with the applicable laws. The Exculpation, including its carve-out for actual fraud, gross negligence, or willful misconduct, is consistent with established practice in this jurisdiction and others.

74. The injunction provision set forth in Article VIII.D of the Plan is necessary to prevent interference with the payment of Claims and Interests in the manner set forth in the Plan and is narrowly tailored to achieve these purposes.

75. Article IV.P of the Plan provides that, in accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold against any Entity shall vest in the Wind-Down Debtor, except as otherwise provided in the Plan, including Article VIII of the Plan. The Wind-Down Debtor, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Wind-Down Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Court in accordance with the Plan. The provisions regarding the preservation of Causes of Action in the Plan, including the Plan Supplement, are appropriate, fair, equitable, and reasonable, and are in the best interests of the Debtors, the Debtors' estates, and Holders of Claims and Interests.



76. The full release and discharge of all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates described in Article VIII.E of the Plan (the “Lien Release”) is necessary to implement the Plan. The provisions of the Lien Release are appropriate, fair, equitable, and reasonable and are in the best interests of the Debtors, the Debtors’ estates, and Holders of Claims and Interests.

### **ORDER**

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED, ADJUDGED, DECREED, AND DETERMINED THAT:

77. **Findings of Fact and Conclusions of Law.** The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact is determined to be a conclusion of law, it is deemed so, and vice versa.

78. **Approval of the Disclosure Statement.** The Disclosure Statement, the Solicitation Packages, and the Solicitation Procedures are approved on a final basis pursuant to section 1125 of the Bankruptcy Code.

79. **Solicitation.** To the extent applicable, the solicitation of votes on the Plan complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, all other provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations, and was appropriate and satisfactory and is approved in all respects.

80. **Notice of Combined Hearing.** The Notice of Combined Hearing was appropriate and satisfactory and is approved in all respects.

81. **Confirmation of the Plan.** The Plan is approved in its entirety and CONFIRMED under section 1129 of the Bankruptcy Code. The terms of the Plan, including the Plan Supplement, are incorporated by reference into and are an integral part of this Confirmation Order.

82. **Objections.** All objections and all reservations of rights pertaining to Confirmation of the Plan and approval of the Disclosure Statement that have not been withdrawn, waived, or consensually resolved are overruled on the merits unless otherwise indicated in this Confirmation Order. All withdrawn objections, if any, are deemed withdrawn with prejudice. All objections to approval of the Disclosure Statement and Confirmation of the Plan not filed and served prior to the Objection Deadline, if any, are deemed waived and shall not be considered by the Court.

83. All parties have had a full and fair opportunity to litigate all issues raised or that might have been raised in the objections to approval of the Disclosure Statement and Confirmation of the Plan, and the objections have been fully and fairly litigated or resolved, including by agreed-upon reservations of rights as set forth in this Confirmation Order.

84. **Plan Modifications.** The Plan Modifications do not materially adversely affect the treatment of any Claim against or Interest in any of the Debtors under the Plan, and are hereby approved pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019. After giving effect to the Plan Modifications, the Plan continues to meet the requirements of sections 1122 and 1123 of the Bankruptcy Code. The filing with the Court on February 28, 2023 of the modifications to the Plan and the disclosure of any additional Plan Modifications on the record at the Combined Hearing constitute due and sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that holders

of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

85. **Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Interests who voted to accept the Plan or who are conclusively presumed to accept the Plan are deemed to have accepted the Plan, as modified by the Plan Modifications. No Holder of a Claim or Interest shall be permitted to change its vote as a consequence of the Plan Modifications.

86. **Restructuring Transactions.** On or before the Effective Date, the applicable Debtors will take any action as may be necessary or advisable to effectuate the Restructuring Transactions described in the Plan, the Restructuring Transactions Memorandum, and the Customer Onboarding Protocol, including: (a) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (d) the transfer or distribution of any Cryptocurrency or Cash pursuant to the Asset Purchase Agreement and the Plan, as applicable; (e) the execution and delivery of the Plan Administrator Agreement; (f) any transactions necessary or appropriate to form the Wind-Down Debtor; (g) such other transactions that are required to effectuate the Restructuring Transactions, including any sales, mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or

liquidations; (h) all transactions necessary to provide for the purchase of the Acquired Assets by Purchaser under the Asset Purchase Agreement; and (i) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

87. This Confirmation Order shall, and shall be deemed to, pursuant to sections 1123 and 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including, as applicable, the Sale Transaction, the Liquidation Transaction, and the Restructuring Transactions, including, for the avoidance of doubt, entry into any agreements following the Confirmation Date by the Debtors, the Purchaser, and any of the Unsupported Jurisdictions in connection with Distributions contemplated to be made by Purchaser to Users and Eligible Creditors (as such terms are defined in the Asset Purchase Agreement) located in Unsupported Jurisdictions, pursuant to and in accordance with the Plan and the Asset Purchase Agreement.

88. **The Sale Transaction.** The Sale Transaction and the Asset Purchase Agreement, all other ancillary documents, and all of the terms and conditions thereof, are hereby approved, pursuant to sections 105, 363, 364, and 554 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004, and 9014, each as applicable. Entry of this Confirmation Order shall authorize the Debtors, the Purchaser, and the Wind-Down Debtor, as applicable, to undertake the transactions contemplated by the Asset Purchase Agreement, as applicable, including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code.

89. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to (a) consummate

the Sale Transaction pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement, (b) close the Sale Transaction as contemplated in the Asset Purchase Agreement, and (c) execute and deliver, perform under, consummate, implement, and fully close the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement and the Sale Transaction.

90. Subject to the restrictions set forth in this Confirmation Order, the Plan, and the Asset Purchase Agreement, the Debtors and the Purchaser hereby are authorized to take any and all actions as may be necessary or desirable, including any actions that otherwise would require further approval by shareholders, members, or its board of directors, as the case may be, without the need of obtaining such approvals, to implement the Sale Transaction, and any actions taken by the Debtors or the Purchaser necessary or desirable to implement the Sale Transaction prior to the date of this Confirmation Order, hereby are approved and ratified.

91. This Confirmation Order and the terms and provisions of the Asset Purchase Agreement shall be binding in all respects upon the Debtors, their affiliates, their estates, all creditors of and holders of equity interests in any Debtor, any holders of Liens, Claims, or other interests (whether known or unknown) in, against, or on all or any portion of the Acquired Assets, all counterparties to any executory contract or unexpired lease of the Debtors, the Purchaser and all successors and assigns of the Purchaser, the Acquired Assets, and any trustees, examiners, or receivers, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Confirmation Order and the Asset Purchase Agreement shall inure to the benefit of the Debtors,

their estates and creditors, the Purchaser, and the respective successors and assigns of each of the foregoing.

92. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Acquired Assets in accordance with the terms of the Asset Purchase Agreement and such transfer shall constitute a legal, valid, binding, and effective sale of the Acquired Assets and shall vest Purchaser with title to the Acquired Assets subject to the Asset Purchase Agreement, and the Acquired Assets shall be free and clear of all Liens, Claims, Encumbrances, and other interests of any kind or nature whatsoever (other than as expressly permitted under the Asset Purchase Agreement), with all such Liens, Claims, or other interests to attach to the cash proceeds of the Purchase Price ultimately attributable to the property against or in which such Liens, Claims, or other interests are asserted, subject to the terms thereof, with the same validity, force, and effect, and in the same order of priority, which such Liens, Claims, or other interests had prior to the Transaction, subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

93. The sale of the Acquired Assets to the Purchaser pursuant to the Asset Purchase Agreement and the consummation of the transactions contemplated by the Asset Purchase Agreement do not require any consents other than as specifically provided for in the Asset Purchase Agreement. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement. A certified copy of this Confirmation Order may be filed with the appropriate clerk or recorded with the recorder of any state, county, or local authority to act to cancel any of the Liens, Claims, and other encumbrances of record.

94. If any person or entity that has filed statements or other documents evidencing Claims or Liens on, or interests in, all or any portion of the Acquired Assets shall not have delivered to the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Claims, Liens, or interests which the person or entity has or may assert with respect to all or any portion of the Acquired Assets, the Debtors are hereby authorized, and the Purchaser is hereby authorized, on behalf of the Debtors and the Debtors' creditors, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets. The Debtors and the Purchaser are each authorized to file a copy of this Confirmation Order, which, upon filing, shall be conclusive evidence of the release and termination of such Claim, Lien or interest.

95. This Confirmation Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

96. All persons and entities that are presently, or on the Closing may be, in possession of some or all of the Acquired Assets pursuant to the Asset Purchase Agreement are hereby



directed to surrender possession of the Acquired Assets to the Purchaser unless such person or entity was a good faith, bona fide purchaser of the Acquired Assets without notice of the Debtors' rights in such property. Subject to the terms, conditions, and provisions of this Confirmation Order, all persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and/or transfer the Acquired Assets to the Purchaser in accordance with the terms of the Asset Purchase Agreement and this Confirmation Order.

97. Except as otherwise permitted by the Asset Purchase Agreement, the Plan, or this Confirmation Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding Liens, Claims, or other interests of any kind or nature whatsoever against or in all or any portion of the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinate), arising under or out of, in connection with, or in any way relating to the Debtors, the Acquired Assets, the operation of the Debtors' business prior to the closing of the Sale Transaction, or the transfer of the Acquired Assets to the Purchaser, hereby are forever barred, estopped and permanently enjoined from asserting against the Purchaser, any of the foregoing's affiliates, successors, or assigns, their property or the Acquired Assets, such persons' or entities' Liens, Claims, or interests in and to the Acquired Assets, including, without limitation, the following actions: (a) commencing or continuing in any manner any action or other proceeding against the Purchaser and each of its affiliates, successors, assets or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser and each of its affiliates, successors, assets, or properties; (c) creating,

perfecting, or enforcing any Lien or other Claim against the Purchaser and each of its affiliates, successors, assets, or properties; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Purchaser, its affiliates or its successors; or (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Confirmation Order, or the agreements or actions contemplated or taken in respect thereof.

98. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Acquired Assets to the Purchaser in accordance with the terms of the Asset Purchase Agreement, the Plan, and this Confirmation Order.

99. Purchaser shall have no Liability (as defined in the Asset Purchase Agreement) for any Excluded Liability, and, other than as expressly set forth in the Asset Purchase Agreement, Purchaser is not assuming, by virtue of the consummation of the Sale Transaction, nor shall the Purchaser be liable or responsible for, as a successor or otherwise (including under any theory of successor or vicarious liability of any kind or character or any other theory of law or equity, including any theory of antitrust, environmental successor or transferee liability, labor law, *de facto* merger, or substantial continuity (including under applicable Money Transmitter Requirements or any securities or commodities Laws of any Governmental Body)):

- (i) any Liability (as defined in the Asset Purchase Agreement), debts, commitments, or obligations of the Debtors or any of their predecessors or affiliates or any obligations of the Debtors or their predecessors or affiliates, in all cases whether known or unknown, disclosed or undisclosed, now existing or hereafter arising, asserted or unasserted, fixed or contingent,

(ii) any Liability (as defined in the Asset Purchase Agreement) calculable by reference to the Debtors or their assets or operations, or relating to the operation of the Debtors' businesses prior to the Closing of the Sale Transaction, or relating to continuing conditions existing, including with respect to any of Debtors' predecessors or affiliates, which liabilities, debts, commitments, and obligations are hereby extinguished insofar as they may give rise to successor liability, without regard to whether the claimant asserting any such liabilities, debts, commitments, or obligations has delivered to the Purchaser a release thereof.

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Binance.US Platform in accordance with the Asset Purchase Agreement (notwithstanding any terms and conditions of the Binance.US Platform to the contrary, if any) through and including such time as such Coins and Cash are returned or distributed to Seller or such User and Eligible Creditor, as applicable, and such Coins and Cash shall be held by Purchaser solely in a custodial capacity in trust and solely for the benefit of Seller or the applicable User or Eligible Creditor.

100. The Asset Purchase Agreement and any related documents or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court.

101. Paragraphs 88–100 of this Confirmation Order shall be deemed to be excised from this Confirmation Order in the event that the Asset Purchase Agreement is terminated prior to Closing. For the avoidance of doubt, subject to the requirements set forth in the Asset Purchase Agreement (including, without limitation, Sections 6.22 and 5.2(c) thereof), the Debtors may exercise the “fiduciary out” in Section 8.1(g) of the Asset Purchase Agreement at any time prior to Closing.

102. **Corporate Action.** Upon the Effective Date, all actions contemplated under the Plan shall be deemed authorized and approved in all respects, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, managing-members, limited or general partners, or officers of the Debtors, the Wind-Down Debtor, or any other Entity.

103. All matters provided for in the Plan involving the corporate structure of the Debtors or the Wind-Down Debtor, as applicable, and any corporate action required by the Debtors or the Wind-Down Debtor, as applicable, in connection with the Plan shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by

the security holders, directors, managers, or officers of the Debtors or the Wind-Down Debtor, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Wind-Down Debtor, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Wind-Down Debtor, and any and all other agreements, documents, and instruments relating to the foregoing. The authorizations and approvals contemplated by Article IV.J of the Plan shall be effective notwithstanding any requirements under non-bankruptcy law.

104. As soon as practicable after the Effective Date, the Wind-Down Debtor shall take such actions as the Wind-Down Debtor may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Wind-Down Debtor on behalf of any Wind-Down Debtor without need for any action or approval by the shareholders or board of directors or managers of such Debtor. On and after the Effective Date, the Debtors or the Wind-Down Debtor (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to the Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. Pursuant to the terms of the Plan, any Money Transmitter Licenses that have not been terminated shall be deemed withdrawn and no further action is required to be taken by the Debtors or the Wind-Down Debtor to effectuate such withdrawal; *provided that*,

following the Effective Date, the Debtors or the Wind-Down Debtor, as applicable, shall use commercially reasonable efforts to comply with all state banking department requirements for the surrender of a Money Transmitter License. Notwithstanding such Debtors' dissolution, such Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

105. **Binding Effect.** Upon the occurrence of the Effective Date, the terms of the Plan are immediately effective and enforceable and deemed binding on the Debtors, the Wind-Down Debtor, any and all Holders of Claims or Interests (regardless of whether such Holders of Claims or Interests have, or are deemed to have, accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or this Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

106. Pursuant to section 1141 of the Bankruptcy Code, subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Confirmation Order, all prior orders entered in these Chapter 11 Cases and all documents and agreements executed by the Debtors as authorized and directed thereunder as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors, the Purchaser, or the Wind-Down Debtor, as applicable, and their respective successors and assigns.

107. **Vesting of Assets.** Except as otherwise provided in the Plan, this Confirmation Order, the Asset Purchase Agreement, the Schedule of Retained Causes of Action, or in any agreement, instrument, or other documented incorporated herein or therein, or in any agreement,

instrument, or other document incorporated in the Plan or the Plan Supplement, notwithstanding any prohibition of assignability under applicable non-bankruptcy law and in accordance with section 1141 of the Bankruptcy Code, on the Effective Date, all property constituting Wind-Down Debtor Assets, including all Vested Causes of Action of the Debtors (unless otherwise released, waived, compromised, settled, satisfied, or transferred pursuant to the Plan) shall vest in the Wind-Down Debtor, free and clear of all Liens, Claims, charges, or other encumbrances.

108. Prior to the Effective Date, any and all of the Debtors' assets shall remain assets of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and on the Effective Date the Wind-Down Debtor Assets shall, subject to the Plan Administrator Agreement, be transferred to and vest in the Wind-Down Debtor. For the avoidance of doubt, to the extent not otherwise waived in writing, released, settled, compromised, assigned, or sold pursuant to a prior order or the Plan, the Plan Administrator specifically retains and reserves the right to assert, after the Effective Date, any and all of the Vested Causes of Action and related rights, whether or not asserted as of the Effective Date, and all proceeds of the foregoing, subject to the terms of the Plan, including without limitation Article IV.F.

109. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, only the Wind-Down Debtor and the Plan Administrator shall have the right to pursue or not to pursue, or, subject to the terms hereof and the Plan Administrator Agreement, compromise or settle any Wind-Down Debtor Assets transferred to the Wind-Down Debtor. On and after the Effective Date, the Wind-Down Debtor and the Plan Administrator may, without further Court approval, commence, litigate, and settle any Vested Causes of Action or Claims relating to any Wind-Down Debtor Assets transferred to the Wind-Down Debtor or rights to payment or Claims that belong to the Debtors as of the Effective Date or are instituted by the Wind-Down Debtor and Plan Administrator on or



after the Effective Date, except as otherwise expressly provided herein and in the Plan Administrator Agreement. The Wind-Down Debtor shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code.

110. Notwithstanding any prohibition on assignability under applicable non-bankruptcy law, on the Effective Date and thereafter if additional Wind-Down Debtor Assets become available, the Debtors shall be deemed, subject to the Plan Administrator Agreement, to have automatically transferred to the applicable Wind-Down Debtor all of their right, title, and interest in and to all of the Wind-Down Debtor Assets, in accordance with section 1141 of the Bankruptcy Code. All such assets shall automatically vest in the Wind-Down Debtor free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims and Interests as set forth in the Plan and the expenses of the Wind-Down Debtor as set forth in the Plan and in the Plan Administrator Agreement. Thereupon, the Debtors shall have no interest in or with respect to the Wind-Down Debtor Assets or the Wind-Down Debtor.

111. On the Effective Date, the Debtors or Plan Administrator, as applicable, may establish one or more accounts or funds to hold and dispose of certain assets, pursue certain litigation (including the Vested Causes of Action), and/or satisfy certain Claims (including Claims that are contingent or have not yet been Allowed). For any such account or fund, the Debtors or the Plan Administrator, as applicable, may take the position that grantor trust treatment applies in whole or in part. To the extent such treatment applies to any such account or fund, for all U.S. federal income tax purposes, the beneficiaries of any such account or fund would be treated as grantors and owners thereof, and it is intended, to the extent reasonably practicable, that any such account or fund would be classified as a liquidating trust under section 301.7701-4 of the Treasury

Regulations. Alternatively, any such account or fund may be subject to the tax rules that apply to “disputed ownership funds” under 26 C.F.R. 1.468B–9. If such rules apply, such assets would be subject to entity-level taxation, and the Debtors and Plan Administrator would be required to comply with the relevant rules.

112. **Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Sale Transaction or the Liquidation Transaction, as applicable, are hereby effective and authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to, or order of the Court, or further action by the respective officers, directors, managers, members, or equity holders of the Debtors or the Wind-Down Debtor and with the effect that such actions had been taken by unanimous action of such officers, directors, managers, members, or equity holders.

113. **Cancellation of Notes, Instruments, Certificates, and Other Documents.** On the later of the Effective Date and the date on which distributions are made pursuant to the Plan (if not made on the Effective Date), except for the purpose of evidencing a right to and allowing Holders of Claims and Interests to receive a distribution under the Plan or to the extent otherwise specifically provided for in the Plan, this Confirmation Order, or any agreement, instrument, or other document entered into in connection with or pursuant to the Plan or the Restructuring Transactions, all notes, bonds, indentures, certificates, Securities, shares, purchase rights, options, warrants, collateral agreements, subordination agreements, intercreditor agreements, or other instruments or documents directly or indirectly evidencing, creating, or relating to any indebtedness or obligations of, or ownership interest in, the Debtors, giving rise to any Claims against or Interests in the Debtors or to any rights or obligations relating to any Claims against or Interests in the

Debtors shall be deemed cancelled without any need for a Holder to take further action with respect thereto.

114. For the avoidance of doubt, cancellation of Existing Equity Interests pursuant to the Plan shall not affect the rights of the Holders of Existing Equity Interests to receive distributions, if any, under the Plan on account of such Existing Equity Interests. Holders of Existing Equity Interests shall continue to possess all rights, powers, privileges, and standing associated with such Existing Equity Interests as if those Existing Equity Interests continue to exist subject to the terms of the Plan and this Confirmation Order.

115. **Distributions.** The procedures governing distributions contained in Article VI of the Plan shall be, and hereby are, approved in their entirety. Except as otherwise set forth in the Plan or this Confirmation Order, the Plan Administrator shall make all distributions required under the Plan and the timing of distributions required under the Plan or this Confirmation Order shall be made in accordance with and as set forth in the Plan, this Confirmation Order, or the Plan Administrator Agreement, as applicable; *provided* that, if a creditor does not timely provide the Plan Administrator with its taxpayer identification number in the manner and by the deadline established by the Plan Administrator and/or the Plan, the creditor shall be deemed to have forfeited its right to any current, reserved or future distributions provided for under the Plan and such creditor's Claim or Interest shall be disallowed and expunged without further order of the Court. Any such forfeited distribution shall be deemed to have reverted back to the Wind-Down Debtor for all purposes, including for distributions to other holders of Allowed Claims or Allowed Interests (as applicable) against the particular Debtor in respect of which the forfeited distribution was made, notwithstanding any federal, provincial or state escheat, abandoned or unclaimed property law to the contrary.

116. **Claims Register.** Any Claim or Interest that has been paid, satisfied, amended, superseded, cancelled, or otherwise expunged (including pursuant to the Plan) may be adjusted or expunged, as applicable, on the Claims Register at the direction of the Debtors or Wind-Down Debtor without the Debtors or Wind-Down Debtor having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Court.

117. **Preservation of Rights of Action.** In accordance with section 1123(b) of the Bankruptcy Code, the Wind-Down Debtor shall succeed to all rights to commence and pursue any and all Vested Causes of Action of the Debtors, whether arising before or after the Petition Date, including, without limitation, any actions specifically enumerated in the Schedule of Retained Causes of Action other than Causes of Action released, waived, settled, compromised, or transferred. Such rights shall be preserved by the Debtors and Wind-Down Debtor and shall vest in the Wind-Down Debtor, with the Wind-Down Debtor's rights to commence, prosecute, or settle such Causes of Action preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action expressly released, waived, settled, compromised, or transferred by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan or pursuant to the Asset Purchase Agreement, which shall be deemed released and waived by the Debtors and the Wind-Down Debtor as of the Effective Date.

118. The Wind-Down Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the beneficiaries of the Wind-Down Debtor and in accordance with the Plan Administrator Agreement and the Plan. No Entity may rely on the absence of a specific reference in the Schedules of Assets and Liabilities or Statement of Financial Affairs, the Plan, the Plan Supplement, the Disclosure Statement, or the Schedule of Retained Causes of Action

to any Cause of Action against it as any indication that the Debtors or the Wind-Down Debtor will not pursue any and all available Causes of Action against it. The Wind-Down Debtor, on behalf of the Debtors and the Wind-Down Debtor, expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise provided in the Plan, including Article VIII of the Plan. Unless any Cause of Action of the Debtors is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or pursuant to a Final Order, the Wind-Down Debtor, on behalf of the Debtors and Wind-Down Debtor and in accordance with the Plan Administrator Agreement, expressly reserves all such Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation.

119. The Wind-Down Debtor, on behalf of the Debtors and the Wind-Down Debtor, reserves and shall retain such Causes of Action of the Debtors notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold against any Entity shall vest in the Wind-Down Debtor, except as otherwise provided in the Plan, including Article VIII of the Plan. The Wind-Down Debtor, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Wind-Down Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Court in accordance with the Plan.

120. **Subordination.** Except as expressly provided in the Plan, the allowance, classification, and treatment of all Allowed Claims against and Allowed Interests in the Debtors and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Wind-Down Debtor reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

121. **Release of Liens.** Except as otherwise provided in the Plan, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan or this Confirmation Order on the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or Wind-Down Debtor, as applicable, and their successors and assigns, in each case, without any further approval or order of the Court and without any action or Filing being required to be made by the Debtors. The presentation or filing of this Confirmation Order to or with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

122. **Governance of the Wind-Down Debtor.** The Plan Administrator shall appoint an independent director at each Debtor to act as a fiduciary for such Debtor entity in connection with the resolution of the Intercompany Claims.

123. **Intercompany Claims.** For the avoidance of doubt, nothing in this Confirmation Order or the Plan shall have any impact on the validity, extent, priority, or treatment of the Intercompany Claims. Any determination as to the validity, extent, priority, or treatment of the Intercompany Claims shall be determined by the Court in a separate matter on proper notice to parties in interest. Notwithstanding anything to the contrary in this Confirmation Order or the Plan, the rights of the ad hoc group of equityholders (the “AHG”) to continue or participate in any adjudication of the Intercompany Claims are preserved, and any party reserves any and all rights, claims, and defenses in connection therewith, including without limitation, the Debtors and/or the Wind-Down Debtor’s right to challenge the AHG’s standing with respect thereto; *provided* that such right, claim, or defense is not based on any provision in this Confirmation Order or the Plan.

124. **FTX Settlement.** Pursuant to the terms of the FTX Settlement, the Debtors shall reserve and hold the amount of \$445 million in Cash on account of the Preference Claims (as defined in the FTX Settlement) asserted by FTX, Alameda, and their estates in the FTX Bankruptcy Proceeding, subject to all defenses and counterclaims thereto, until the final resolution of the Preference Claims by settlement or a final and unappealable order by the court in the FTX Bankruptcy Proceeding, including any appeals therefrom.

125. **General Settlement of Claims and Interests.** As discussed in detail in the Disclosure Statement and as otherwise provided in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the



provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of this Confirmation Order shall constitute the Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as well as a finding by the Court that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

126. **Third-Party Releases.** For the avoidance of doubt, any party that did not affirmatively "opt in" to the Third-Party Releases contained in the Plan shall not be deemed to grant such Third-Party Releases contained in the Plan.

127. **Contributed Third Party Claims.** For the avoidance of doubt, any party that did not affirmatively "opt in" to contribute their Contributed Third-Party Claims to the Wind-Down Debtor shall not be deemed to contribute their claims to the Wind-Down Debtor; *provided, however,* that any party may contribute their Contributed Third-Party Claims to the Wind-Down Debtor on or after the Effective Date by separate agreement with the Plan Administrator and Wind-Down Debtor. Any such agreement shall be valid to the same extent as if the party affirmatively opted in to contribute their Contributed Third-Party Claims to the Wind-Down Debtor.

128. **Operations After Closing.** On and after the Effective Date, except as otherwise provided in the Plan, the Debtors or the Wind-Down Debtor may use, acquire, or dispose of

property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

129. **Assumption and Rejection of Executory Contracts and Unexpired Leases.** On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (a) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (b) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (c) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (d) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (e) is a D&O Liability Insurance Policy other than the Side-A Policy. Entry of this Confirmation Order constitutes approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Except as otherwise provided in this Confirmation Order, any and all objections or reservations of rights in connection with the rejection of an Executory Contract or Unexpired Lease under the Plan, if any, are overruled on their merits.

130. **Waiver or Estoppel.** Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest

should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed prior to the Confirmation Date.

131. **Insurance Policies and Surety Bonds.** Each D&O Liability Insurance Policy (including, without limitation, any “tail policy” and all agreements, documents, or instruments related thereto) other than the Side-A Policy shall be assumed, in their entirety, without the need for any further notice to or action, order, or approval of the Court, as of the Effective Date, pursuant to sections 105 and 365 of the Bankruptcy Code with the Wind-Down Debtor being authorized to pursue any proceeds thereof on behalf of the Debtors or the Wind-Down Debtor. The Side-A Policy shall remain in effect during these Chapter 11 Cases with the Debtors, and the Wind-Down Debtor preserves all avoidance and other actions in connection with the premium paid thereunder. All beneficiaries under the D&O Insurance Policies reserve their rights under such D&O Insurance Policies subject to the limitations set forth in the Plan.

132. The Debtors or the Wind-Down Debtor, as applicable, shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policy (including, without limitation, any “tail policy” and all agreements, documents, or instruments related thereto) in effect prior to the Effective Date, and subject in all respects to the D&O Settlement, any current and former directors, officers, managers, and employees of the Debtors who served in such capacity at any time before or after the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy subject to the terms thereof regardless of whether such directors, officers, managers, and employees remain in such positions after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Debtors or the Wind-Down Debtor shall

retain the ability to supplement such D&O Liability Insurance Policy as the Debtors or Wind-Down Debtor may deem necessary, subject to the prior written consent of the Wind-Down Debtor.

133. The Debtors shall continue to satisfy their obligations under their insurance policies in full and continue such programs in the ordinary course of business. Each of the Debtors' insurance policies, and any agreements, documents, or instruments relating thereto shall be treated as Executory Contracts under the Plan. On the Effective Date: (a) the Debtors shall be deemed to have assumed all such insurance policies and any agreements, documents, and instruments relating thereto in their entirety and (b) such insurance policies and any agreements, documents, or instruments relating thereto shall revert in the applicable Wind-Down Debtor(s) unaltered.

134. **Authorization to Consummate.** The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to consummation as set forth in Article IX of the Plan.

135. **Professional Compensation.** All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than sixty (60) days after the Effective Date. The Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules. The Wind-Down Debtor shall pay Professional Fee Claims in Cash to such Professionals in the amount the Court allows, including from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by entry of an order of the Court; *provided* that the Debtors' and the Wind-Down Debtor's obligations to pay Allowed Professional

Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account.

136. No later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. No funds held in the Professional Fee Escrow Account shall be property of the Estates of the Debtors or the Wind-Down Debtor. When all Professional Fee Claims Allowed by the Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Court, any remaining funds held in the Professional Fee Escrow Account shall be turned over to the Wind-Down Debtor without any further notice to or action, order, or approval of the Court or any other Entity.

137. The Professionals shall deliver to the Debtors a reasonable and good-faith estimate of their unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, and shall deliver such estimate no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Fee Claims Filed with the Court, and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total

aggregate amount so estimated to be outstanding as of the anticipated Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account; provided that the Wind-Down Debtor shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

138. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors and/or the Wind-Down Debtor, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Wind-Down Debtor. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtor may employ and pay any Professional in the ordinary course of business for the period after the Confirmation Date without any further notice to or action, order, or approval of the Court.

139. **Return of Deposits.** All utilities, including, but not limited to, any Person or Entity that received a deposit or other form of adequate assurance of performance under section 366 of the Bankruptcy Code during these Chapter 11 Cases, must return such deposit or other form of adequate assurance of performance to the Wind-Down Debtor promptly following the occurrence of the Effective Date, if not returned or applied earlier.

140. **Release, Exculpation, and Injunction Provisions.** The release, exculpation, injunction, opt in, and related provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all Persons and Entities to the extent

provided therein except as otherwise provided in this Confirmation Order, *provided, however*, that nothing in the exculpation related provisions of the Plan shall release the Debtors from the provisions of the Plan governing satisfaction of Allowed Claims including Allowed Administrative Expense Claims or change the standard for liability on Allowed Claims or Allowed Administrative Expense Claims, subject to any applicable bankruptcy and non-bankruptcy law.

141. For the avoidance of doubt, the Debtors are not seeking a discharge under section 1141(d).

142. **Governmental Units.** Nothing in this Confirmation Order or the Plan shall effect a release by the United States, the States or any of their agencies of any claim arising under the Internal Revenue Code, the environmental laws or any civil or criminal laws of the United States or the States, or under any rules or regulations enforced by the United States, the States or any of their agencies against the Released Parties, nor shall anything in the Confirmation Order or the Plan enjoin the United States or the States from bringing any claim, suit, action or other proceedings against the Released Parties for any liability for any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any civil or criminal laws of the United States or the States, or under any rules or regulations enforced by the United States, the States or any of their agencies, nor shall anything in the Confirmation Order or the Plan exculpate any such party from any liability to the United States, the States or any of their agencies, arising under the Internal Revenue Code, the environmental laws or any civil or criminal laws of the United States or the States, or under any rules or regulations enforced by the United States, the States or any of their agencies; *provided, however*, that nothing in this Confirmation Order or the Plan shall modify in any respect the relief previously granted in the Bar Date Order and thus no person or entity, including the United States, the States or any of their agencies, can seek or receive a direct or



indirect distribution of any property of the Debtors' estates unless they filed a Proof of Claim prior to the Governmental Bar Date; *provided*, further, that the United States, the States, and their agencies may not, and will not, allege that the Restructuring Transactions are a violation of any rules or regulations enforced by the United States, the States or any of their agencies, nor will they bring any claim against any Person on account of or relating to the Restructuring Transactions.

143. Nothing in this Confirmation Order, the Disclosure Statement, the Plan, or the Asset Purchase Agreement releases, precludes, or enjoins: (i) any liability to any governmental unit as defined in 11 U.S.C. § 101(27) ("Governmental Unit") that is not a "claim" as defined in 11 U.S.C. § 101(5) ("Claim"); (ii) any Claim of a Governmental Unit arising on or after the Effective Date; or (iii) any liability to a Governmental Unit on the part of any non-Debtor (except to the extent set forth in paragraphs 97 and 99 herein); *provided*, however, that nothing in this Confirmation Order or the Plan shall modify in any respect the relief previously granted in the Bar Date Order; *provided*, further, that no Governmental Unit will allege that the Restructuring Transactions are a violation of any rules or regulations enforced by the United States, the States or any of their agencies, nor will they bring any claim against any Person on account of or relating to the Restructuring Transactions. Nothing in this Confirmation Order, the Disclosure Statement, the Plan, or the Asset Purchase Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, without compliance with all applicable legal requirements.

144. **Securities and Exchange Commission Provisions.** Notwithstanding anything to the contrary in this Confirmation Order, or any findings announced at the Combined Hearing, nothing in this Confirmation Order, or announced at the Combined Hearing, constitutes a finding under the federal securities laws as to whether crypto tokens or transactions involving crypto

tokens are securities, and the right of the SEC to challenge transactions involving crypto tokens on any basis is expressly reserved.

145. Notwithstanding any provision herein to the contrary, nothing in this Confirmation Order or the Plan grants this Court jurisdiction over any police and regulatory actions by the SEC, and the SEC shall retain the power and authority to commence and continue any such actions against any person or entity, including without limitation, the Debtors, in any forum with jurisdiction; *provided*, however, that nothing in this Confirmation Order or the Plan shall modify in any respect the relief previously granted in the Bar Date Order; *provided, however*, that the SEC will not allege that the Restructuring Transactions are a violation of any rules or regulations enforced by the SEC, nor will they bring any claim against any Person on account of or relating to the Restructuring Transactions.

146. Upon the occurrence of the Effective Date, the Debtors' books and records shall be transferred to the Wind-Down Debtor, which shall continue to preserve all financial books and records, emails, and other financial documents relating to the Debtors' business that are currently in the Debtors' possession. The Wind-Down Debtor shall not destroy or otherwise abandon any such documents or records without providing advance notice to the SEC (c/o Therese Scheuer, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, ScheuerT@SEC.GOV) and seeking further authorization from this Court. Nothing in the Plan or this Confirmation Order shall affect the obligations of the pre-Effective Date Debtors, the Wind-Down Debtor, and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

147. Notwithstanding any language to the contrary herein, no provision in the Plan or this Confirmation Order shall (a) preclude the OSC or the SEC from enforcing its police or regulatory powers or (b) enjoin, limit, impair or delay the OSC or SEC from commencing or continuing any claims, causes of action, proceeding, or investigations against any non-Debtor person or non-Debtor entity in any forum.

148. **Employee Transition Plan.** The Employee Transition Plan, the terms of which are included in the Plan Supplement as Exhibit H, will be implemented following the Effective Date and is not subject to the Court's approval.

149. **Compliance with Tax Requirements.** In connection with the Plan, to the extent applicable, the Debtors, the Wind-Down Debtor, any Distribution Agent, and any other applicable withholding and reporting agents shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including winding-down a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms that are reasonable and appropriate; *provided* that the Wind-Down Debtor and the Distribution Agent, as applicable, shall request appropriate documentation from the applicable distributees and allow such distributees a reasonable amount of time to respond. The Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents reserve the right to allocate all

distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

**150. Exemption from Certain Taxes and Fees.** To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Debtor, the Wind-Down Debtor, the Purchaser, or to any other Entity) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Wind-Down Debtor; (b) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; or (d) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, including the Asset Purchase Agreement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forgo the collection of any such tax

or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

151. **Termination of Asset Purchase Agreement.** If the Asset Purchase Agreement is terminated and the Sale Transaction is not consummated, all provisions in this Confirmation Order relating to the Asset Purchase Agreement, the Sale Transaction, and the Purchaser shall be of no force and effect, and the Debtors are authorized to consummate the Liquidation Transaction without further order of the Court.

152. **The Liquidation Transaction.** If the Asset Purchase Agreement is terminated, the Debtors shall pursue the Liquidation Transaction contemplated under the Plan and shall provide all Holders of Claims and Interests with the treatment afforded to such Holders under the Plan. In the event that the Debtors determine to pursue the Liquidation Transaction contemplated under Article IV of the Plan, the Debtors shall promptly notify the Court and all parties in interest. The Plan shall be deemed to satisfy all requirements under the Bankruptcy Code with respect to either the Sale Transaction or the Liquidation Transaction pursuant to this Confirmation Order.

153. **Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring Transactions, and this Confirmation Order.

154. **The BNY Objection.** This Confirmation Order confirms that the Deed of Trust and Assignment of Rents recorded January 5, 2023 Official Records of Orange County (the “Deed”) transferring title of 37 Black Hawk, Irvine, California 92603 (the “Property”) from Michael G. Beason and Mickey L. Wiebeis (collectively, the “Property Borrowers”) to Voyager Digital, LLC is void. This Confirmation Order may be recorded against the Property as evidence

and confirmation that the Deed is void. The Bank Of New York Mellon f/k/a the Bank Of New York, As Trustee For The Certificateholders Of CWALT, Inc., Alternative Loan Trust 2005-38, Mortgage Pass-Through Certificates, Series 2005-38 as Serviced by Shellpoint Mortgage Servicing (“Shellpoint”) shall be permitted to take any other the necessary actions to void the Deed. To the extent necessary, the automatic stay is lifted solely as it pertains to Shellpoint’s rights to take action against the Property and shall be effective immediately upon entry of this Confirmation Order. The Debtor(s) shall not be party to any foreclosure or other proceeding related to the Property as they lack any interest in the Property. Shellpoint shall release the Debtors and the Wind-Down Debtor of any costs and claims incurred on account of the Property, including any actions taken in any foreclosure or other proceeding or associated with voiding the Deed. This Confirmation Order shall in no way prevent Shellpoint from pursuing any and all lawful rights and remedies as to the Property Borrowers.

155. **Continued Effect of Stays and Injunction.** Unless otherwise provided in the Plan or this Confirmation Order, all injunctions or stays arising under or entered during these Chapter 11 Cases under section 362 of the Bankruptcy Code or otherwise and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

156. **Non-Severability.** Each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors’ consent, consistent with the terms set forth herein; and (c) non-severable and mutually dependent.

157. **Notice of Subsequent Pleadings.** Except as otherwise provided in the Plan or in this Confirmation Order, notice of all subsequent pleadings in these Chapter 11 Cases after the

Effective Date will be limited to the following parties: (a) the Wind-Down Debtor and its counsel; (b) the U.S. Trustee; (c) counsel to the Purchaser; (d) any party known to be directly affected by the relief sought by such pleadings; and (e) any party that specifically requests additional notice in writing to the Debtors, the Wind-Down Debtor, or the Plan Administrator, as applicable, or files a request for notice under Bankruptcy Rule 2002 after the Effective Date. The Notice and Claims Agent shall not be required to file updated service lists.

158. **Post-Confirmation Modifications.** Subject to the limitations and terms contained in the Plan and Purchaser's consent rights under the Asset Purchase Agreement, the Debtors, with the consent of the Committee, reserve the right to (a) amend or modify the Plan before the entry of this Confirmation Order, in accordance with the Bankruptcy Code and the Bankruptcy Rules and (b) after the entry of this Confirmation Order, the Debtors or the Wind-Down Debtor, as applicable, may, upon order of the Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth in the Plan.

159. **Plan Classification Controlling.** The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of the distributions to be made thereunder and the classifications set forth on the ballots tendered to or returned by the Holders of Claims or Interests in connection with voting on the Plan: (a) were set forth thereon solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of Claims and Interests under the Plan for distribution purposes; (c) may not be relied upon by any Holder of a Claim or Interest as



representing the actual classification of such Claim or Interest under the Plan for distribution purposes; and (d) shall not be binding on the Debtors except for voting purposes.

160. **Choice of Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan and any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, documents, instruments, or contracts, in which case the governing law of such agreement shall control); provided that corporate, limited liability company, or partnership governance matters relating to the Debtors or the Wind-Down Debtor, as applicable, shall be governed by the laws of the jurisdiction of incorporation or formation of the relevant Debtor or Wind-Down Debtor, as applicable.

161. **Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

162. **Waiver of Filings.** Any requirement under section 521 of the Bankruptcy Code or Bankruptcy Rule 1007 obligating the Debtors to file any list, schedule, or statement with the Court or the Office of the U.S. Trustee is permanently waived as to any such list, schedule, or statement not filed as of the Confirmation Date.

163. **Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state, federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents,

instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement. As provided in section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license of the Debtors or Wind-Down Debtor on account of the filing or pendency of the Chapter 11 Cases.

164. **Protection Against Discriminatory Treatment.** As provided by section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Entity, including Governmental Units, shall discriminate against any Wind-Down Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, any Wind-Down Debtor, or any Entity with which a Wind-Down Debtor has been or is associated, solely because such Wind-Down Debtor was a debtor under chapter 11 of the Bankruptcy Code or may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases).

165. **Notices of Confirmation and Effective Date.** The Debtors or the Wind-Down Debtor, as applicable, shall serve notice of entry of this Confirmation Order, of the occurrence of the Effective Date, and of applicable deadlines (the “Notice of Confirmation”) in accordance with Bankruptcy Rules 2002 and 3020(c) on all parties served with the Combined Hearing Notice seven Business Days after the Effective Date; *provided* that no notice of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed notice of the Combined Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address,” or “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity’s new address. For those parties

receiving electronic service, filing on the docket is deemed sufficient to satisfy such service and notice requirements.

166. No later than ten Business Days after the Effective Date, the Wind-Down Debtor shall cause the Notice of Confirmation, modified for publication, to be published on one occasion in *The New York Times* (national edition) and *USA Today* (national edition). Mailing and publication of the Notice of Confirmation in the time and manner set forth in this paragraph will be good, adequate, and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c). No further notice is necessary.

167. The Notice of Confirmation will have the effect of an order of the Court, will constitute sufficient notice of the entry of this Confirmation Order to filing and recording officers, and will be a recordable instrument notwithstanding any contrary provision of applicable nonbankruptcy law. The above-referenced notices are adequate under the particular circumstances of these Chapter 11 Cases and no other or further notice is necessary.

168. **Dissolution of Statutory Committees.** On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases; *provided, however*, that such committees will remain in existence for the limited purposes of (a) pursuing, supporting, or otherwise participating in, any outstanding appeals in the Chapter 11 Cases; and (b) filing, objecting, or otherwise participating in, any final fee applications of Professionals.

169. **Exemption from Registration.** The Plan Administrator shall hold the equity of the Voyager Digital Ltd., to the extent that any new equity is issued, in an agency capacity, for the

benefit of and to facilitate the rights of Holders of Interests provided under the Plan; *provided* that such equity, if issued, shall be uncertificated and non-transferable.

170. Distributions to Holders of Claims and Interests in accordance with the Plan shall not be deemed to be unlicensed money transmission.

171. **Effect of Non-Occurrence of Conditions to Confirmation.** If the Effective Date does not occur within 120 days after the Confirmation Date, then the Plan will be null and void in all respects, any and all compromises or settlements not previously approved by Final Order of the Court embodied in the Plan (including with respect to the fixing, limiting, or treatment of any Claim or Interest), shall be deemed null and void, and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action held by any Debtor or any other Entity; (b) prejudice in any manner the rights of any Debtor or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity in any respect.

172. **Substantial Consummation.** On the Effective Date, the Plan shall be deemed to have been substantially consummated or shall be anticipated to be substantially consummated concurrent with the occurrence of the Effective Date.

173. **Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Court.

174. **Immediate Binding Effect.** Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Debtor, and any and all Holders of Claims or Interests (irrespective of whether such Claims or

Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, exculpations, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or Interest has voted on the Plan.

175. **References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by reference.

176. **Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

177. **Effect of Conflict.** This Confirmation Order supersedes any Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall govern and control. For the avoidance of doubt, the *Stipulation and Agreed Order Between the Debtors and Metropolitan Commercial Bank* [Docket No. 821] remains in effect and is not superseded by this Confirmation Order.

178. **Final, Appealable Order.** This Confirmation Order is a final judgment, order, or decree for purposes of 28 U.S.C. § 158(a), and the period in which an appeal must be filed shall commence upon the entry hereof.

179. **Retention of Jurisdiction.** The Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including (i) the matters set forth in Article XI of the Plan and (ii) as set forth in Section 10.13 of the Asset Purchase Agreement.

New York, New York  
Dated: \_\_\_\_\_, 2023

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THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**The Plan**



**Exhibit B**

**Redline**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER (I) APPROVING THE SECOND AMENDED  
DISCLOSURE STATEMENT AND (II) CONFIRMING THE THIRD  
AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND ITS  
DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Voyager Digital Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”)<sup>2</sup> having:

- a. commenced, on July 5, 2022 (the “Petition Date”), these chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief in the United States Bankruptcy Court for the Southern District of New York (the “Court”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);
- b. continued to operate their business and manage their property during these Chapter 11 Cases as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- c. filed,<sup>3</sup> on July 6, 2022, the *Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 17];
- d. filed, on July 21, 2022, the *Debtors’ Motion Seeking Entry of an Order (I) Approving the Bidding Procedures and Related Dates and Deadlines, (II) Scheduling Hearings and Objection Deadlines with Respect to the Debtors’*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan, the Disclosure Statement, the Asset Purchase Agreement, or the Bankruptcy Code (each as defined herein), as applicable. The rules of interpretation set forth in Article I.B. of the Plan apply.

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in these Chapter 11 Cases, as applicable.

*Sale, Disclosure Statement, and Plan Confirmation, and (III) Granting Related Relief* [Docket No. 126];

- e. obtained, on August 5, 2022, the entry of the *Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Debtors' Sale, Disclosure Statement, and Plan Confirmation and (V) Granting Related Relief* [Docket No. 248] (the "Bidding Procedures Order") approving the *Bidding Procedures for the Submission, Receipt, and Analysis of Bids in Connection with the Sale of the Debtors*, attached to the Bidding Procedures Order as Exhibit 1 (the "Bidding Procedures");
- f. filed, on August 12, 2022, the *First Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 287], the *Disclosure Statement Relating to the First Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 288], and the *Debtors' Motion for Entry of an Order Approving (I) the Adequacy of the Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [Docket No. 289];
- g. commenced, on September 13, 2022, the Auction for the sale of substantially all of the Debtors' assets in accordance with the Bidding Procedures;
- h. closed, on September 26, 2022, the Auction and selected West Realm Shires Inc. ("FTX US") as the Winning Bidder (as defined in the Bidding Procedures);
- i. obtained, on October 20, 2022, entry of the *Order (I) Authorizing Entry of the Asset Purchase Agreement and (II) Granting Related Relief* [Docket No. 581], which authorized entry into that certain asset purchase agreement by and between Voyager Digital, LLC and West Realm Shires Inc. (together with its affiliates, "FTX US," and the asset purchase agreement, the "FTX US Asset Purchase Agreement");
- j. filed, on October 24, 2022, the *Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 590] and the *First Amended Disclosure Statement Relating to the Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 591];
- k. filed, on December 9, 2022, the *Stipulation and Agreed Order* [Docket No. 717] by and between FTX US and the Debtors (the "FTX US APA Stipulation"), terminating the FTX US Asset Purchase Agreement;
- l. filed, on December 21, 2022, the *Debtors' Motion for Entry of an Order (I) Authorizing Entry into the Binance US Purchase Agreement and (II) Granting Related Relief* [Docket No. 775] and that certain asset purchase agreement by and

between Voyager Digital, LLC and BAM Trading Services Inc. d/b/a Binance.US (together with its affiliates, “Binance.US,” and the asset purchase agreement, the “Asset Purchase Agreement”)

- m. filed, on December 22, 2022, the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 777] (as amended, modified, or supplemented from time to time, the “Plan”), the *Second Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 778] (as amended, modified, or supplemented from time to time, the “Disclosure Statement”), and the *Debtors’ Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Adequacy of the Debtors’ Disclosure Statement, (III) Approving (A) Procedures for Solicitation, (B) Forms of Ballots and Notices, (C) Procedures for Tabulation of Votes, and (D) Procedures for Objections, and (IV) Granting Related Relief* [Docket No. 779];
- n. filed, on January 9, 2023, the first amendment to the Asset Purchase Agreement [Docket No. 835];
- o. obtained, on January 10, 2023, approval of the FTX US APA Stipulation [Docket No. 849];
- p. filed, on January 10, 2023, the revised Plan [Docket No. 852];
- q. filed, on January 13, 2023, the revised Disclosure Statement [Docket No. 863];
- r. obtained, on January 13, 2023, entry of the *Order (I) Authorizing Entry into the Asset Purchase Agreement and (II) Granting Related Relief* [Docket No. 775], which granted entry into the asset purchase agreement with Binance.US (the “Asset Purchase Agreement Order”);
- s. obtained, on January 13, 2023, entry of the *Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Adequacy of the Debtors’ Disclosure Statement, (III) Approving (A) Procedures for Solicitation, (B) Forms of Ballots and Notices, (C) Procedures for Tabulation of Votes and (D) Procedures for Objections* [Docket No. 861] (the “Conditional Disclosure Statement Order”) conditionally approving the Disclosure Statement, solicitation procedures (the “Solicitation Procedures”), and solicitation materials, including notices, forms, and ballots (collectively, the “Solicitation Packages”);
- t. caused the Solicitation Packages and notice of the Combined Hearing and the deadline for objecting to the Disclosure Statement and to confirmation of the Plan (“Confirmation”) to be distributed on or before January 25, 2023 (the “Solicitation Date”), in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Bankruptcy

Rules for the Southern District of New York (the “Local Rules”), the Disclosure Statement Order, and the Solicitation Procedures, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 926] and the *Supplemental Affidavit of Service* [Docket Nos. 927 and 1016] (collectively, the “Affidavit of Solicitation”);

- u. filed, on February 1, 2023, the *Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* [Docket No. 943] (the “Initial Plan Supplement”) and caused notice of the filing of the Initial Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 951];
- v. published, on February 3, 2023, notice of the Combined Hearing (the “Combined Hearing Notice”) in the *The New York Times* (National Edition) and *Financial Times* (International Edition), as evidenced by the *Affidavits of Publication* [Docket Nos. 954 and 955] (the “Publication Affidavits” and, together with the Affidavit of Solicitation, the “Affidavits”);
- w. filed, on February 8, 2023, the *First Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* [Docket No. 986] (the “First Amended Plan Supplement”) and caused notice of the filing of the First Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 992];
- x. filed, on February 15, 2023, the *Second Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* (the “Second Amended Plan Supplement”) [Docket No. 1006] and caused notice of the filing of the Second Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 1037];
- y. filed, on February 21, 2023, the *Third Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* (the “Third Amended Plan Supplement”) [Docket No. 1035] and caused notice of the filing of the Third Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 1058];
- z. filed, on February 28, 2023, the *Debtors’ Motion for Entry of an Order Approving Joint Stipulation and Agreed Order Between the Voyager Debtors, the FTX Debtors, and Their Respective Official Committees of Unsecured Creditors* [Docket No. 1106] (the “FTX Settlement”);
- aa. filed, on February 28, 2023, the *Declaration of Leticia Sanchez Regarding the Solicitation and Tabulation of Votes on the Third Amended Joint Plan of Voyager*

*Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1108] ~~(the “Voting Report”);~~

- bb. filed, on February 28, 2023, the *Debtors’ Memorandum of Law in Support of (I) Final Approval of the Second Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code and (II) an Order Confirming the Debtors’ Third Amended Joint Chapter 11 Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* [Docket No. 1110] (the “Confirmation Brief”);
- cc. filed, on February 28, 2023, the *Declaration of Timothy R. Pohl, Independent Director and Member of the Special Committee of the Board of Directors of Voyager Digital, LLC, in Support of Confirmation of the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1111] (the “Pohl Declaration”)
- dd. filed, on February 28, 2023, the *Declaration of Brian Tichenor in Support of Confirmation of the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1113] (the “Tichenor Declaration”);
- ee. filed, on February 28, 2023, the *Fourth Amended Plan Supplement for the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates* (the “Fourth Amended Plan Supplement”) (together with the Initial Plan Supplement, First Amended Plan Supplement, Second Amended Plan Supplement, and Third Amended Plan Supplement, and as may be modified, amended, or supplemented from time to time, the “Plan Supplement”) [Docket No. 1115] and will cause notice of the filing of the Fourth Amended Plan Supplement to be distributed in accordance with paragraph 12 of the Disclosure Statement Order; and
- ff. filed, on February 28, 2023, the revised version of the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1117];
- gg. filed, on February 28, 2023, the *Declaration of Mark A. Renzi in Support of Confirmation of the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1119] (the “Renzi Declaration,” and, together with the Voting Report, the Pohl Declaration, the Tichenor Declaration, and the Renzi Declaration, the “Declarations”);
- hh. filed, on February 28, 2023, the Notice of Filing of Proposed Findings of Fact, Conclusions of Law, and Order (I) Approving the Second Amended Disclosure Statement and (II) Confirming the Third Amended Joint Plan of Voyager Digital



*Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code;*

- ii. filed, on March 1, 2023, the revised version of the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1125];
- jj. filed, on March 1, 2023, the *Amended Declaration of Leticia Sanchez Regarding the Solicitation and Tabulation of Votes on the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1127] (the “Voting Report”); and
- kk. ~~hh.~~ filed, on ~~February~~ March 28, 2023, ~~this~~ the revised version of the *Notice of Filing of Proposed Findings of Fact, Conclusions of Law, and Order (I) Approving the Second Amended Disclosure Statement and (II) Confirming the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (this “Confirmation Order”).

The Court having:

- a. entered the Bidding Procedures Order on August 5, 2022 [Docket No. 248];
- b. entered the Asset Purchase Agreement Order on January 13, 2023 [Docket No. 775];
- c. entered the Conditional Disclosure Statement Order on January 13, 2023 [Docket No. 861];
- d. set February 22, 2023, at 4:00 p.m. (prevailing Eastern Time) as the deadline to object to the Disclosure Statement and the Plan and to object to proposed cure costs and any assumption of an Executory Contract or Unexpired Lease pursuant to the *Schedule of Assumed Executory Contracts and Unexpired Leases* (the “Assumed Contract Schedule”), filed as Exhibit A to the Plan Supplement (the “Plan Objection Deadline”);
- e. set February 22, 2023, at 4:00 p.m. (prevailing Eastern Time) as the deadline for voting on the Plan (the “Voting Deadline”);
- f. set March 2, 2023 at 10:00 a.m. (prevailing Eastern Time) as the date and time for the commencement of the Combined Hearing, pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the Bankruptcy Code;
- g. reviewed the Plan, the Disclosure Statement, the Plan Supplement, the Confirmation Brief, the Declarations, the Voting Report, the Combined Hearing Notice, the Affidavits, and all filed pleadings, exhibits, statements, and comments



regarding Confirmation, including all objections, statements, and reservations of rights filed by parties in interest on the docket of the Chapter 11 Cases;

- h. held the Combined Hearing on March 2, 2023 at 10:00 a.m., prevailing Eastern Time;
- i. heard the statements and arguments made by counsel with respect to final approval of the Disclosure Statement and Confirmation of the Plan;
- j. considered all oral representations, live testimony, written direct testimony, designated deposition testimony, exhibits, documents, filings, and other evidence presented at the Combined Hearing;
- k. overruled any and all objections to the Disclosure Statement and the Plan and to Confirmation and all statements and reservations of rights not consensually resolved, agreed to, or withdrawn, unless otherwise indicated; and
- l. taken judicial notice of all papers and pleadings and other documents filed, all orders entered, and all evidence and arguments presented in these Chapter 11 Cases.

NOW, THEREFORE, the Court having found that the notice of the Combined Hearing and the opportunity for any party in interest to object to approval of the Disclosure Statement and confirmation of the Plan were adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated therein, and that the legal and factual bases set forth in the documents filed in support of approval of the Disclosure Statement and confirmation of the Plan and other evidence presented at the Combined Hearing and the record of the Chapter 11 Cases establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Court makes and issues the following findings of fact and conclusions of law, and orders:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

IT IS DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:

**A. Findings and Conclusions.**

1. The findings and conclusions set forth herein and in the record of the Combined Hearing constitute the Court's findings of fact and conclusions of law under rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.

**B. Jurisdiction, Venue, and Core Proceeding.**

2. The Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, entered February 1, 2012. The Court has exclusive jurisdiction to determine whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code and should be approved and confirmed, respectively. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

**C. Eligibility for Relief.**

3. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

**D. Commencement and Joint Administration of the Chapter 11 Cases.**

4. On the Petition Date, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. In accordance with the *Order (I) Directing Joint Administration of the Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 18], these

Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. Since the Petition Date, the Debtors have operated their business and managed their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

**E. Appointment of the Committee.**

5. On July 19, 2022, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 106].

**F. Judicial Notice, Objections Overruled.**

6. The Court takes judicial notice of (and deems admitted into evidence for purposes of final approval of the Disclosure Statement and Confirmation of the Plan) the docket of the Chapter 11 Cases maintained by the clerk of the Court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of these Chapter 11 Cases. All objections, statements, informal objections, and reservations of rights not consensually resolved, agreed to, or withdrawn, if any, related to the Disclosure Statement, the Plan, or Confirmation are overruled on the merits unless otherwise indicated in this Confirmation Order.

**G. Conditional Disclosure Statement Order.**

7. On January 13, 2023, the Court entered the Conditional Disclosure Statement Order [Docket No. 861], which, among other things, set (i) February 22, 2023, at 4:00 p.m. (prevailing Eastern Time) as (a) the Plan Objection Deadline and (b) the Voting Deadline and

(ii) March 2, 2023, at 10:00 a.m. (prevailing Eastern Time) as the date and time for commencement of the Combined Hearing.

**H. Adequacy of the Disclosure Statement.**

8. The Disclosure Statement contains (a) sufficient information of a kind necessary to satisfy the disclosure requirements of all applicable nonbankruptcy laws, rules, and regulations, including the Securities Act, and (b) “adequate information” (as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein. The filing of the Disclosure Statement with the clerk of the Court satisfied Bankruptcy Rule 3016(b), and the Disclosure Statement, the Plan, and the Solicitation Packages provided all parties-in-interest with sufficient notice regarding the settlement, release, exculpation, and injunction provisions contained in the Plan in compliance with Bankruptcy Rule 3016(c).

**I. Burden of Proof—Confirmation of the Plan.**

9. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation.

**J. Notice.**

10. The Debtors provided due, adequate, and sufficient notice of the Disclosure Statement, the Conditional Disclosure Statement Order, the Plan, the Plan Supplement, the Solicitation Packages, the Combined Hearing Notice, the proposed assumption and rejection of Executory Contracts and Unexpired Leases and the proposed cure amounts, and all the other materials distributed by the Debtors in connection with Confirmation of the Plan, together with the Plan Objection Deadline, the Voting Deadline, and the Combined Hearing, and any

applicable bar dates and hearings described in the Conditional Disclosure Statement Order, in compliance with the Bankruptcy Rules, Local Rules, and the procedures set forth in the Disclosure Statement Order. No other or further notice is or shall be required.

**K. Solicitation.**

11. Prior to the Combined Hearing, the Debtors filed the Voting Report. The Voting Report was admitted into evidence during the Combined Hearing. As described in the Voting Report, the solicitation of votes on the Plan complied with the Solicitation Procedures, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable rules, laws, and regulations.

12. As described in the Voting Report, following the Petition Date, the Solicitation Packages, the Plan Supplement, and the Combined Hearing Notice were transmitted and served, including to all Holders of Claims in Class 3 (Account Holder Claims), Class 4A (OpCo General Unsecured Claims), Class 4B (HoldCo General Unsecured Claims), and Class 4C (TopCo General Unsecured Claims) (collectively, the “Voting Classes”) that held a Claim as of January 10, 2023 (the date specified in such documents for the purpose of solicitation) (the “Voting Record Date”), in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Local Rules, the Disclosure Statement Order, and any applicable nonbankruptcy law. Transmission and service of the Solicitation Packages and the Combined Hearing Notice were timely, adequate, and sufficient. The establishment and notice of the Voting Record Date were reasonable and sufficient. No other or further notice is required.

13. The period during which Holders in the Voting Classes were required to submit acceptances or rejections to the Plan was reasonable and sufficient for such Holders to make an informed decision to accept or reject the Plan.

14. As set forth in the Plan, Holders of Claims in the Voting Classes were eligible to vote on the Plan in accordance with the Solicitation Procedures. Holders of Claims in Class 1 (Secured Tax Claims) and Class 2 (Other Priority Claims) (collectively, the “Presumed Accepting Classes”) are Unimpaired and conclusively presumed to accept the Plan and, therefore, did not vote to accept or reject the Plan. Holders of Claims in Class 7 (Intercompany Claims) and Interests in Class 8 (Intercompany Interests) either are Unimpaired and conclusively presumed to have accepted the Plan (to the extent reinstated) or Impaired and conclusively deemed to have rejected the Plan, and, therefore, are not entitled to vote to accept or reject the Plan. Holders of Claims in Class 5 (Alameda Loan Facility Claims) and Class 6 (Section 510(b) Claims) and Interests in Class 9 (Existing Equity Claims) (collectively, the “Deemed Rejecting Classes”) are Impaired under the Plan and are deemed to have rejected the Plan. Nevertheless, the Debtors served Holders in such Deemed Rejecting Classes with the Plan, the Disclosure Statement, the Non-Voting Status Notice, and the Combined Hearing Notice.

**L. Voting.**

15. As evidenced by the Voting Report, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Conditional Disclosure Statement Order, and any applicable nonbankruptcy law, rule, or regulation.

16. As evidenced by the Voting Report, Class 3 (Account Holder Claims), Class [4A \(OpCo General Unsecured Claims\)](#), Class [4B \(HoldCo General Unsecured Claims\)](#),

and Class 4C (TopCo General Unsecured Claims) voted to accept the Plan in accordance with section 1126 of the Bankruptcy Code.

17. Based on the foregoing, and as evidenced by the Voting Report, at least one Impaired Class of Claims (excluding the acceptance by any insiders of any of the Debtors) has voted to accept the Plan in accordance with the requirements of sections 1124 and 1126 of the Bankruptcy Code.

**M. Plan Supplement.**

18. The Plan Supplement complies with the Bankruptcy Code and the terms of the Plan, and the filing and notice of the documents included in the Plan Supplement are adequate and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Conditional Disclosure Statement Order, and the facts and circumstances of the Chapter 11 Cases. No other or further notice is or will be required with respect to the Plan Supplement. All documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan, compliance with the Bankruptcy Code and the Bankruptcy Rules, and, solely to the extent set forth under the Asset Purchase Agreement, consent of the Purchaser, and in a form reasonably acceptable to the Committee, the Debtors reserve the right to alter, amend, update, or modify the Plan Supplement before the Effective Date.

**N. Modifications to the Plan.**

19. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan since the commencement of Solicitation described or set forth herein constitute technical changes or changes with respect to particular Claims or Interests made pursuant to the agreement of the Holders of such Claims or Interests and do not materially and adversely affect or change



the treatment of any other Claims or Interests. Pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that the Holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

20. This Confirmation Order contains modifications to the Plan that were made to address objections and informal comments received from various parties in interest. Modifications to the Plan since the entry of the Conditional Disclosure Statement Order, if any, are consistent with the provisions of the Bankruptcy Code. The disclosure of any Plan modifications prior to or on the record at the Combined Hearing constitutes due and sufficient notice of any and all Plan modifications. The Plan as modified shall constitute the Plan submitted for Confirmation.

**O. Bankruptcy Rule 3016.**

21. The Plan and all modifications thereto are dated and identify the Entities submitting them, thereby satisfying Bankruptcy Rule 3016(a). The Debtors appropriately filed the Disclosure Statement and the Plan with the Court, thereby satisfying Bankruptcy Rule 3016(b). The injunction, release, and exculpation provisions in the Disclosure Statement and the Plan describe, in bold font and with specific and conspicuous language, all acts to be enjoined and identify the entities that will be subject to the injunction, thereby satisfying Bankruptcy Rule 3016(c).

**P. Compliance with Bankruptcy Code Requirements—Section 1129(a)(1).**

22. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code.

(i) **Proper Classification—Sections 1122 and 1123(a)(1).**

23. The classification of Claims and Interests under the Plan is proper under the Bankruptcy Code. In accordance with sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article III of the Plan provides for the separate classification of Claims and Interests into eleven Classes. Valid business, factual, and legal reasons exist for the separate classification of such Classes of Claims and Interests. The classifications were not implemented for any improper purpose and do not unfairly discriminate between, or among, Holders of Claims or Interests. Each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Accordingly, the Plan satisfies the requirements of sections 1122(a), 1122(b), and 1123(a)(1) of the Bankruptcy Code.

(ii) **Specified Unimpaired Classes—Section 1123(a)(2).**

24. Article III of the Plan specifies that Claims in Class 1 (Secured Tax Claims) and Class 2 (Other Priority Claims) are Unimpaired under the Plan and Claims and Interests in Class 7 (Intercompany Claims) and Class 8 (Intercompany Interests), respectively, are either Impaired or Unimpaired under the Plan.

25. Article III of the Plan specifies that Claims in the following Classes are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code:

<b>Class</b>	<b>Designation</b>
1	Secured Tax Claims
2	Other Priority Claims

26. Additionally, Article II of the Plan specifies that Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, and all fees due and payable pursuant to section 1930 of title 28 of the United States Code before the Effective Date will be paid in full in accordance with the terms of the Plan, although these Claims are not separately

classified under the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

**(iii) Specified Treatment of Impaired Classes—Section 1123(a)(3).**

27. The Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code. Article III of the Plan specifies that Claims and Interests, as applicable, in the following Classes (collectively, the “Impaired Classes”) are Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code, and describes the treatment of such Classes.

<b>Class</b>	<b>Designation</b>
3	Account Holder Claims
4A	OpCo General Unsecured Claims
4B	HoldCo General Unsecured Claims
4C	TopCo General Unsecured Claims
5	Alameda Loan Facility Claims
6	Section 510(b) Claims
9	Existing Equity Interests

**(iv) No Discrimination—Section 1123(a)(4).**

28. The Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest.

**(v) Adequate Means for Plan Implementation—Section 1123(a)(5).**

29. The Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code. The provisions in Article IV and elsewhere in the Plan and the Plan Supplement, and in the exhibits and attachments to the Disclosure Statement provide, in detail, adequate and proper means for the Plan’s implementation, including the: (a) effectuation of the Restructuring Transactions contemplated by the Plan, the Restructuring Transactions Memorandum, and the

Customer Onboarding Protocol; (b) consummation of the Sale Transaction by the Outside Date pursuant to the Asset Purchase Agreement; (c) if the Sale Transaction is not consummated by the Outside Date pursuant to the Asset Purchase Agreement, then the effectuation of the Liquidation Transaction in accordance with the Liquidation Procedures; (d) adoption and implementation of the Employee Transition Plan; (e) retention of certain Claims or Causes of Action held by the Debtors or their Estates, which shall be assigned and transferred to the Wind-Down Debtor after the Effective Date; (f) effectuation of the terms of the D&O Settlement; (g) authorization for the Debtors and the Wind-Down Debtor, as applicable, to take all actions as may be necessary or appropriate to effectuate the Restructuring Transactions and any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan; (h) establishment of the Wind-Down Debtor pursuant to the Plan Administrator Agreement and the transfer of the Wind-Down Debtor Assets to the Wind-Down Debtor after the Effective Date; (i) the funding and sources of consideration for the Plan distributions; and (j) settlement, satisfaction, and compromise of Claims and Interests as set forth in the Plan.

**(vi) Voting Power of Equity Securities—Section 1123(a)(6).**

30. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of nonvoting equity securities. On the Effective Date the Wind-Down Debtor Assets shall, subject to the Plan Administrator Agreement, be transferred to and vest in the Wind-Down Debtor. The Wind-Down Debtor shall be managed by the Plan Administrator and shall be subject to a Wind-Down Debtor Oversight Committee. The Plan Administrator shall be responsible for, among other things: (a) implementing the Wind-Down Debtor, and making distributions contemplated by the Plan; (b) marshalling, marketing for sale, and winding down any of the Debtors' assets constituting Wind-Down

Debtor Assets; (c) appointing an independent director at each Debtor to act as a fiduciary for such Debtor entity in connection with the resolution of the Intercompany Claims; (d) overseeing the accounts of the Debtors and the Wind-Down Debtor and the wind-down and dissolution of the Debtors and the Wind-Down Debtor, including effectuating the transactions described in the Restructuring Transactions Memorandum; (e) receiving, maintaining, conserving, supervising, prosecuting, collecting, settling, managing, investing, protecting, and where appropriate, causing the Wind-Down Debtor to abandon the Wind-Down Debtor Assets, including causing the Wind-Down Debtor to invest any moneys held as Wind-Down Debtor Assets; (f) opening and maintaining bank accounts on behalf of or in the name of the Debtors or the Wind-Down Debtor, including, in the Plan Administrator's discretion, separate bank accounts for each of the Debtors; (g) entering into any agreement or executing any document or instrument required by or consistent with the Plan, this Confirmation Order, or the Plan Administrator Agreement, and to perform all obligations thereunder; (h) collecting and liquidating all Wind-Down Debtor Assets, including the sale of any Wind-Down Debtor Assets; (i) protecting and enforcing the rights to the Wind-Down Debtor Assets (including any Vested Causes of Action and Contributed Third-Party Claims) vested in the Wind-Down Debtor and Plan Administrator by the Plan Administrator Agreement by any method deemed appropriate, including, without limitation, by judicial proceedings or otherwise; (j) investigating any Wind-Down Debtor Assets, and any other potential Vested Causes of Action and Contributed Third-Party Claims; (k) reviewing, reconciling, compromising, settling, objecting, or prosecuting Claims or Interests of any kind; (l) seeking the examination of any Person pursuant to Federal Rule of Bankruptcy Procedure 2004; (m) retaining professionals, disbursing agents, and other agents, independent contractors, and third parties pursuant to the Plan Administrator Agreement and paying the reasonable

compensation thereof; (n) paying all lawful expenses, debts, charges, taxes, and other liabilities, and making all other payments relating to the Wind-Down Debtor Assets, solely out of Wind-Down Debtor Assets; (o) prosecuting and settling the Vested Causes of Action, including, without limitation, the 3AC Claims, FTX Claims, Alameda Claims, Contributed Third-Party Claims, and any causes of action not included in the Asset Purchase Agreement or released under the Plan; (p) reviewing, reconciling, pursuing, commencing, prosecuting, compromising, settling, dismissing, releasing, waiving, withdrawing, abandoning, resolving, or electing not to pursue all Vested Causes of Action and Contributed Third-Party Claims; (q) acquiring litigation and other claims related to the Debtors, and prosecuting such claims; (r) reviewing and compelling turnover of the Debtors or the Wind-Down Debtor's property; (s) calculating and making all Distributions to the holders of Allowed Claims against each Debtor and, solely to the extent of payment in full of Allowed Claims, to holders of Allowed Interests, as provided for in, or contemplated by, the Plan and the Plan Administrator Agreement; *provided* that because the Plan does not substantively consolidate the Debtors' Estates, the Plan Administrator shall make Distributions from the Wind-Down Debtor Assets to the holders of Claims and Interests (if applicable) against that specific Debtor; (t) establishing, administering, adjusting, and maintaining the Wind-Down Reserve and the Disputed Claims Reserve; (u) withholding from the amount distributable to any Person the maximum amount needed to pay any tax or other charge that the Plan Administrator has determined, based upon the advice of his agents or professionals, may be required to be withheld from such Distribution under the income tax or other laws of the United States or of any state or political subdivision thereof; (v) in reliance upon the Debtors' Schedules, the official Claims Register maintained in the Chapter 11 Cases and the Debtors' filed lists of equity security holders, reviewing, and where appropriate,

allowing or objecting to Claims and (if applicable) Interests, and supervising and administering the commencement, prosecution, settlement, compromise, withdrawal, or resolution of all objections to Disputed Claims and (if applicable) Disputed Interests required to be administered by the Wind-Down Debtor; (w) making all tax withholdings, filing tax information returns, filing and prosecuting tax refunds claims, making tax elections by and on behalf of the Debtors or the Wind-Down Debtor, and filing tax returns for the Debtors or the Wind-Down Debtor pursuant to and in accordance with the Plan, and paying taxes, if any, payable for and on behalf of the Debtors or the Wind-Down Debtor, as applicable; *provided, however*, that notwithstanding any other provision of the Plan Administrator Agreement, the Plan Administrator shall not have any responsibility or personal liability in any capacity whatsoever for the signing or accuracy of the Debtors' income tax returns that are due to be filed after the Effective Date or for any tax liability related thereto; (x) abandoning or donating to a charitable organization qualifying under IRC section 501(c)(3) any Wind-Down Debtor Assets that the Plan Administrator determines to be too impractical to distribute or of inconsequential value; (y) seeking a determination of tax liability or refund under Bankruptcy Code section 505; (z) establishing reserves for taxes, assessments, and other expenses of administration of the Debtors or the Wind-Down Debtor as may be necessary and appropriate for the proper operation of matters incident to the Debtors or the Wind-Down Debtor; paying Wind-Down Debtor Expenses; (aa) if the Plan Administrator deems appropriate in the Plan Administrator's sole discretion, seeking to establish a bar date for filing proofs of Interest in any Debtor or otherwise to determine the holders and extent of Allowed Interests in any Debtor; (bb) purchasing and carrying all insurance policies that the Plan Administrator deems reasonably necessary or advisable and paying all associated insurance premiums and costs; (cc) undertaking all administrative functions remaining in the Chapter 11



Cases to the extent necessary to carry out the Debtors', the Wind-Down Debtor's, or the Plan Administrator's duties under the Plan, including reporting and making required payments of fees to the U.S. Trustee and overseeing the closing of the Chapter 11 Cases; (dd) retaining, terminating, appointing, hiring, or otherwise employees, personnel, management, and directors at any of the Debtors to the extent necessary to carry out the purposes of the Plan Administrator Agreement and the Plan, including, without limitation, to address any disputes between the Debtors; (ee) exercising, implementing, enforcing, and discharging all of the terms, conditions, powers, duties, and other provisions of the Plan, the Confirmation Order, and the Plan Administrator Agreement; and (ff) taking all other actions consistent with the provisions of the Plan and the Plan Administrator Agreement that the Plan Administrator deems reasonably necessary or desirable to administer the Debtors and the Wind-Down Debtor. Further, on or prior to the Effective Date, the Wind-Down Debtor's organizational documents will be amended to prohibit the issuance of non-voting equity securities. Accordingly, the Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

**(vii) Directors and Officers—Section 1123(a)(7).**

31. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. Article IV.J of the Plan provides that, upon filing of the certificate of dissolution (or equivalent document), the Wind-Down Debtor will be dissolved. Article IV.H of the Plan provides for the formation of the Wind-Down Debtor for the benefit of the Wind-Down Debtor Beneficiaries. The Wind-Down Debtor shall be managed by the Plan Administrator and shall be subject to a Wind-Down Debtor Committee. The selection of the Plan Administrator by the Committee, in consultation with the Debtors, is consistent with the interests of Holders of Claims and Interests and public policy. The appointment of the Plan Administrator identified in the Plan Supplement

is approved, and the Plan Administrator's duties shall commence as of the Effective Date. In accordance with the Plan Administrator Agreement, the Plan Administrator shall serve in such capacity through the earlier of (i) the date on which the Wind-Down Debtor is dissolved in accordance with the Plan Administrator Agreement, and (ii) the date on which the Plan Administrator resigns, is terminated, or is otherwise unable to serve; *provided, however*, that, in the event that the Plan Administrator resigns, is terminated, or is otherwise unable to serve, the Wind-Down Debtor Oversight Committee shall appoint a successor to serve as the Plan Administrator in accordance with the Plan Administrator Agreement. If the Wind-Down Debtor Oversight Committee does not appoint a successor within the time periods specified in the Plan Administrator Agreement, then the Court, upon the motion of any party-in-interest, including counsel to the Wind-Down Debtor, shall approve a successor to serve as the Plan Administrator. Accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

**(viii) Impairment / Unimpairment of Classes—Section 1123(b)(1).**

32. The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. Article III of the Plan leaves each Class of Claims and Interests Impaired or Unimpaired.

**(ix) Treatment of Executory Contracts and Unexpired Leases—Section 1123(b)(2).**

33. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. Article V of the Plan provides that, on the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired

Lease: (1) is specifically described in the Plan as to be assumed in connection with Confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy other than the Side-A Policy. Each of the Debtors' determinations regarding the assumption and rejection of Executory Contracts and Unexpired Leases is based on and within the sound business judgment of the Debtors, is necessary to the implementation of the Plan, and is in the best interests of the Debtors, their Estates, Holders of Claims and Interests, and other parties in interest in these Chapter 11 Cases.

**(x) Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action—Section 1123(b)(3).**

34. The Plan is consistent with section 1123(b)(3) of the Bankruptcy Code. Except as otherwise provided in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies settled, compromised, satisfied, or otherwise resolved pursuant to the Plan. The Plan is deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of this Confirmation Order constitutes the Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as well as a finding that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

**(xi) Additional Plan Provisions—Section 1123(b)(6).**

35. The other discretionary provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code.

**Q. Debtor Compliance with the Bankruptcy Code—Section 1129(a)(2).**

36. The Debtors have complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court, and thus,

satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

- a. is an eligible debtor under section 109, and a proper proponent of the Plan under section 1121(a), of the Bankruptcy Code; and
- b. complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, the Bankruptcy Rules, the Local Rules, any applicable nonbankruptcy law, rule and regulation, the Conditional Disclosure Statement Order, and all other applicable law, in transmitting the Solicitation Packages and related documents and notices, and in soliciting and tabulating the votes on the Plan.

**R. Plan Proposed in Good Faith—Section 1129(a)(3).**

37. The Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code. The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In so determining, the Court has examined the totality of the circumstances surrounding the filing of these Chapter 11 Cases, the Plan itself, the process leading to Confirmation, including the support of Holders of Claims and Interests for the Plan, and the transactions to be implemented pursuant thereto. These Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to implement the Restructuring Transactions and maximize the value of the Estates and the recoveries of Holders of Claims and Interests.

**S. Payment for Services or Costs and Expenses—Section 1129(a)(4).**

38. The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

**T. Directors, Officers, and Insiders—Section 1129(a)(5).**

39. Because the Plan provides for the winding down and dissolution of the Debtors, section 1129(a)(5) of the Bankruptcy Code does not apply to the Debtors. To the extent section 1129(a)(5) applies to the Wind-Down Debtor, the requirements of this provision are satisfied by, among other things, disclosing the identity and terms of compensation of the Plan Administrator and the Wind-Down Debtor Oversight Committee.

**U. No Rate Changes—Section 1129(a)(6).**

40. Section 1129(a)(6) of the Bankruptcy Code is not applicable to these Chapter 11 Cases. The Plan does not propose any rate change subject to the jurisdiction of any governmental regulatory commission.

**V. Best Interest of Creditors—Section 1129(a)(7).**

41. The Plan is in the best interests of the Debtors' creditors and satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis attached to the Disclosure Statement and the other evidence related thereto in support of the Plan that was proffered or adduced in the Declarations or at, prior to, or in connection with the Combined Hearing: (a) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that Holders of Allowed Claims and Interests in each Class will recover at least as much under the Plan on account of such Claim or Interest, as of the Effective Date, as such Holder would receive if the Debtors were liquidated, on the Effective Date, under chapter 7 of the Bankruptcy Code.





Plan by the requisite numbers and amounts of Claims, determined without including any acceptance of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code), specified under the Bankruptcy Code.

**Z. Feasibility—Section 1129(a)(11).**

45. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The evidence supporting the Plan proffered or adduced by the Debtors at or before the Combined Hearing: (a) is reasonable, persuasive, credible, and accurate as of the dates such evidence was prepared, presented, or proffered; (b) has not been controverted by other persuasive evidence; (c) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization; (d) establishes that the Distribution Agent, or the Wind-Down Debtor, as applicable, will have sufficient funds available to meet their obligations under the Plan—including sufficient amounts of Cash, Cryptocurrency, or other consideration, as applicable, to reasonably ensure payment of, among other things, Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Account Holder Claims, and Allowed General Unsecured Claims, as applicable, pursuant to the terms of the Plan and in accordance with section 507(a) of the Bankruptcy Code; and (e) establishes that the Wind-Down Debtor will have the financial wherewithal to satisfy their obligations following the Effective Date.

**AA. Payment of Statutory Fees—Section 1129(a)(12).**

46. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Article XII.C of the Plan provides for the payment of all fees due and payable under 28 U.S.C. § 1930 by each of the Wind-Down Debtor (or the Distribution Agent on behalf of the Wind-Down Debtor).

**BB. Continuation of Employee Benefits—Section 1129(a)(13).**

47. The Debtors do not have any remaining obligations to pay retiree benefits (as defined in section 1114 of the Bankruptcy Code). Therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases or the Plan.

**CC. Non-Applicability of Certain Sections—Sections 1129(a)(14), (15), and (16).**

48. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals, and are not nonprofit corporations.

**DD. “Cram Down” Requirements—Section 1129(b).**

49. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code. Notwithstanding the fact that the Deemed Rejecting Classes have not accepted the Plan, the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code. *First*, all of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met. *Second*, the Plan is fair and equitable with respect to Class 5 (Alameda Loan Facility Claims), Class 6 (Section 510(b) Claims), and Class 9 (Existing Equity Interests). The Plan has been proposed in good faith, is reasonable, and meets the requirements that (a) no Holder of any Claim or Interest that is junior to each such Class will receive or retain any property under the Plan on account of such junior Claim or Interest, and (b) no Holder of a Claim or Interest in a Class senior to such Classes is receiving more than payment in full on account of its Claim or Interest. Specifically, to the extent Class 8 (Intercompany Interests) are Reinstated, such treatment is provided for administrative convenience and efficiency, and not on account of such Interests, and will not alter the treatment provided for any other Holder of any Claim or Interest. Further, Class 7 (Intercompany Claims) will receive the treatment as determined by the Court.

Accordingly, the Plan is fair and equitable towards all Holders of Claims and Interests in the Deemed Rejecting Classes. *Third*, the Plan does not discriminate unfairly with respect to the Deemed Rejecting Classes because similarly situated Claim and Interest Holders will receive substantially similar treatment on account of their Claims or Interests, as applicable, in such class. Therefore, the Plan may be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

**EE. Only One Plan—Section 1129(c).**

50. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan is the only chapter 11 plan filed in each of these Chapter 11 Cases.

**FF. Principal Purpose of the Plan—Section 1129(d).**

51. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act.

**GG. Not Small Business Cases—Section 1129(e).**

52. The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code does not apply to the Chapter 11 Cases.

**HH. Good Faith Solicitation—Section 1125(e).**

53. The Debtors have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to support and consummation of the Plan, including the solicitation and receipt of acceptances of the Plan, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

**II. Satisfaction of Confirmation Requirements.**

54. Based on the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code.

**JJ. Likelihood of Satisfaction of Conditions Precedent to the Effective Date.**

55. Each of the conditions precedent to the Effective Date, as set forth in Article IX.A of the Plan, has been or is reasonably likely to be satisfied or, as applicable, waived in accordance with Article IX.B of the Plan.

**KK. Implementation.**

56. All documents and agreements necessary to implement the transactions contemplated by the Plan, including those contained or summarized in the Plan Supplement, and all other relevant and necessary documents (including the Asset Purchase Agreement) have been negotiated in good faith and at arm's length, are in the best interests of the Debtors, and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal, state, or local law. The Debtors are authorized to take any action reasonably necessary or appropriate to consummate such agreements and the transactions contemplated thereby.

**LL. Executory Contracts and Unexpired Leases.**

57. The Debtors' decisions to assume or reject certain Executory Contracts and Unexpired Leases, as provided in Article V of the Plan and in the Plan Supplement, are reasonable exercises of the Debtors' business judgment. The Debtors have demonstrated adequate assurance of future performance of the assumed Executory Contracts and Unexpired Leases within the meaning of section 365(b)(1)(C) of the Bankruptcy Code by the Wind-Down Debtor.

58. Except with respect to the Executory Contracts and Unexpired Leases discussed in the following paragraph of this Confirmation Order, the amounts set forth in the Plan Supplement (the “Cure Amounts”) are the sole amounts necessary to be paid upon assumption of the associated Executory Contracts and Unexpired Leases under section 365(b)(1)(A) and (B) of the Bankruptcy Code, and the payment of such amounts will effect a cure of all defaults existing under such Executory Contracts and Unexpired Leases and compensate the counterparties to such Executory Contracts and Unexpired Leases for any actual pecuniary loss resulting from all defaults existing under such Executory Contracts and Unexpired Leases as of the Effective Date.

59. The objections of counterparties to the assumption of their Executory Contracts and Unexpired Leases, to the extent that such objection was timely raised in accordance with Article V.C of the Plan, are preserved and will be considered by the Court at a date and time to be scheduled. As provided in the Conditional Disclosure Statement Order and the Solicitation Packages, the Debtors and the Wind-Down Debtor have reserved the right to (a) add any Executory Contract or Unexpired Lease to the Assumed Contract Schedule and assume such Executory Contract or Unexpired Lease pursuant to the terms of the Plan, or remove any Executory Contract or Unexpired Lease from the Assumed Contract Schedule, in each case, up until the Effective Date and (b) contest any Claim asserted in connection with rejection of any Executory Contract or Unexpired Lease.

**MM. Disclosure of Facts.**

60. The Debtors have disclosed all material facts regarding the Plan, including with respect to consummation of the Sale Transaction and the Liquidation Transaction, as applicable.

**NN. Appropriate Exercise of Business Judgment.**

61. The Debtors' decision to effectuate the Sale Transaction or the Liquidation Transaction, as applicable, is an appropriate exercise of their business judgment.

**OO. Good Faith.**

62. The Debtors, the Released Parties, and the Releasing Parties have been and will be acting in good faith if they proceed to: (a) consummate the Plan and the agreements, settlements, transactions, and transfers contemplated thereby; and (b) take the actions authorized and directed by this Confirmation Order to wind-down the Debtors' businesses and effect the Sale Transaction or the Liquidation Transaction, as applicable, and the other Restructuring Transactions. The Released Parties have made a substantial contribution to these Chapter 11 Cases.

**PP. Essential Elements of the Plan.**

63. The Sale Transaction is an essential element of the Plan, and consummation of the Sale Transaction is in the best interests of the Debtors, their estates, and their creditors. The Debtors have exercised sound business judgment in selecting the Purchaser and the Debtors have done so without collusion and in good faith. The Purchaser is consummating the Sale Transaction in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code. The Purchaser has proceeded in good faith and without collusion in all respects in connection with the Sale Transaction. The Purchaser is therefore entitled to all of the protections afforded under section 363(m) of the Bankruptcy Code, and the Sale Transaction, to the extent consummated, may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

64. The Debtors' marketing process with respect to the Sale Transaction afforded a full, fair, and reasonable opportunity for any party to make a higher or otherwise better offer. No

other party or parties has offered to purchase the Acquired Assets for greater overall value to the Debtors' Estates than the Purchaser. The Asset Purchase Agreement will provide a greater recovery for the Debtors' Estates than would be provided by any other available alternative. The Debtors' determination that the Sale Transaction is the most value-maximizing transaction is a valid and sound exercise of the Debtors' business judgment. Consummation of the Sale Transaction is in the best interests of the Debtors' Estates, their creditors, and other parties in interest.

65. The consideration provided by the Purchaser pursuant to the Asset Purchase Agreement (a) is fair and reasonable, (b) constitutes the best offer for the Acquired Assets, and (c) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code) and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

66. The Purchaser is not a mere continuation or substantial continuation of the Debtors or their Estates and there is no continuity of enterprise or common identity between the Purchaser and any of the Debtors. The Purchaser is not holding itself out to the public as a continuation of any of the Debtors. The Purchaser is not a successor to the Debtors or their Estates by reason of any theory of law or equity, and the Sale Transaction does not amount to a consolidation, merger, or de facto merger of the Purchaser with or into any of the Debtors. The Purchaser has entered into the Asset Purchase Agreement in material reliance on and with fair consideration provided for the Sale Transaction being free and clear of all claims and interests relating to the Debtors arising prior to the closing of the Sale Transaction, including any successor or vicarious liabilities of any kind or nature, as set forth herein and in the Asset



Purchase Agreement, and would not have entered into the Asset Purchase Agreement or the Sale Transaction without such terms and the findings herein.

67. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtors may sell, and upon the Closing of the Sale Transaction shall be deemed to have sold, assets and property pursuant to the Asset Purchase Agreement free and clear of any claims, liens, encumbrances, or other interests of any kind or nature whatsoever other than as expressly provided under the Asset Purchase Agreement. In addition to and without limiting the foregoing, the proposed Sale Transaction is to be consummated under the Plan, and the assets and property to be sold pursuant to the Sale Transaction are dealt with by the Plan; therefore, except as expressly provided under the Asset Purchase Agreement, the Debtors may sell, and upon the Closing of the Sale Transaction shall be deemed to have sold, assets and property pursuant to the Asset Purchase Agreement free and clear of any claims, liens, encumbrances, or other interests of any kind or nature whatsoever pursuant to section 1141(c) of the Bankruptcy Code.

68. The Debtors may sell, and upon the Closing of the Sale Transaction shall be deemed to have sold, such assets free and clear of all claims, liens, encumbrances, and other interests of any kind or nature whatsoever (other than as expressly permitted under the Asset Purchase Agreement) because, in each case, one or more of the standards set forth in sections 363(f)(1)–(5), 1129(b)(2)(A)(ii), 1141(a), or 1141(c) of the Bankruptcy Code has been satisfied. All holders of such claims, liens, encumbrances, or other interests against the Debtors, their Estates, or any of the assets subject to the Sale Transaction (a) who did not object, or who withdrew their objections, to the Sale Transaction are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code and (b) are bound by the Plan pursuant to section

1141(a) of the Bankruptcy Code. All holders of such claims, liens, encumbrances, or other interests are adequately protected by having their claims, liens, encumbrances, or other interests, if any, in each instance against the Debtors, their Estates, or any of the assets subject to the Sale Transaction, attach to the proceeds of the Sale Transaction ultimately attributable to the assets in which such creditor alleges a claim, lien, encumbrance, or other interest, in the same order of priority, with the same validity, force, and effect that such claim, lien, encumbrance, or other interest had prior to consummation of the Sale Transaction, subject to any claims and defenses the Debtors and their Estates may possess with respect thereto, and with such claims, liens, encumbrances, or other interests being treated in accordance with the Plan.

69. Article VIII.A of the Plan describes certain releases granted by the Debtors, the Wind-Down Debtor, and the Debtors' and the Wind-Down Debtor's Estates (the "Debtor Release"). The Debtors have satisfied the business judgment standard with respect to the propriety of the Debtor Release. Such release is a necessary and integral element of the Plan, and is fair, reasonable, and in the best interests of the Debtors, the Debtors' Estates, and Holders of Claims and Interests. The Debtors', the Wind-Down Debtor's and their Estates' pursuit of any such claims against the Released Parties is not in the best interests of the Estates' various constituencies because the costs involved would likely outweigh any potential benefit from pursuing such claims. Additionally, including for the reasons set forth in the Declarations, the Debtor Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties following extensive, arm's-length negotiations between sophisticated parties represented by able counsel; (b) a good-faith settlement and compromise of such Causes of Action released by the Debtor Release, which bore a substantial likelihood of complex and protracted litigation, with attendant expense, inconvenience, and delay; (c) in the best interests of

the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; (f) a sound exercise of the Debtors' business judgment; and (g) except to the extent contemplated by Article IV.F of the Plan, a bar to any of the Debtors, the Wind-Down Debtor or their Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

70. Article IV.G of the Plan describes the D&O Settlement. The D&O Settlement constitutes a good-faith compromise and settlement of all Claims, Causes of Action, disputes, and controversies released, settled, compromised, or otherwise resolved between the Debtors and the CEO and CCO. The D&O Settlement is fair, equitable, and reasonable and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests.

71. Article VIII.B of the Plan describes certain releases granted by the Releasing Parties (the "Third-Party Release"). The Third-Party Release provides finality for the Debtors, the Wind-Down Debtor, and the other Released Parties. The Third-Party Release is consensual with respect to the Releasing Parties. The Combined Hearing Notice sent to Holders of Claims and Interests and published in *The New York Times* (National Edition) and the *Financial Times* (International Edition) on February 3, 2023, and the ballots and notices, as applicable, sent to Holders of Claims and Interests unambiguously stated that the Plan contains the Third-Party Release and that each Holder of Claims or Interests may elect not to grant such Third-Party Release. Such release provisions of the Plan were conspicuous, emphasized with boldface type in the Plan, the Disclosure Statement, and the ballots and notices. Among other things, the Plan provides appropriate and specific disclosure with respect to the claims and Causes of Action that are subject to the Third-Party Release, and no other disclosure or notice is necessary. The Third-Party Release is a necessary and integral element of the Plan, and is fair,

equitable, reasonable, and in the best interests of the Debtors, the Debtors' Estates, and all Holders of Claims and Interests. Also, the Third-Party Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good-faith settlement and compromise of such the Claims released by the Third-Party Releases; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; (f) a sound exercise of the Debtors' business judgment; and (g) except to the extent contemplated by Article IV.E and Article IV.F of the Plan, a bar to any of the Debtors or Wind-Down Debtor or their respective Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

72. The Third-Party Releases are consensual and those Holders of Claims and Interests who are bound by the Third-Party Releases voluntarily opted-in to the Third-Party Releases. The Plan does not release any third party's direct claims against non-Debtors (to the extent such direct claims exist) without such third party's express consent. Holders of Claims and Interests also had the ability to affirmatively elect to "contribute" their claims to the Wind-Down Debtor and vest the Wind-Down Debtor with authority to pursue such claims against the Debtors.

73. The exculpation described in Article VIII.C of the Plan (the "Exculpation") is appropriate under applicable law because it was proposed in good faith, was formulated following extensive good-faith, arm's-length negotiations with key constituents, and is appropriately limited in scope. Without limiting anything in the Exculpation, each Exculpated Party has participated in these Chapter 11 Cases in good faith and, except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each

Exculpated Party is hereby released and exculpated as set forth in the Plan; *provided* that the foregoing “Exculpation” shall have no effect on the liability of any entity that results from any such act or omission that is determined by a Final Order to have constituted actual fraud, gross negligence, or willful misconduct, but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in any and all activities potentially underlying any Exculpated Claim in good faith and in compliance with the applicable laws. The Exculpation, including its carve-out for actual fraud, gross negligence, or willful misconduct, is consistent with established practice in this jurisdiction and others.

74. The injunction provision set forth in Article VIII.D of the Plan is necessary to prevent interference with the payment of Claims and Interests in the manner set forth in the Plan and is narrowly tailored to achieve these purposes.

75. Article IV.P of the Plan provides that, in accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold against any Entity shall vest in the Wind-Down Debtor, except as otherwise provided in the Plan, including Article VIII of the Plan. The Wind-Down Debtor, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Wind-Down Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Court in accordance with the Plan. The provisions regarding the preservation of Causes of Action in the Plan,

including the Plan Supplement, are appropriate, fair, equitable, and reasonable, and are in the best interests of the Debtors, the Debtors' estates, and Holders of Claims and Interests.

76. The full release and discharge of all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates described in Article VIII.E of the Plan (the "Lien Release") is necessary to implement the Plan. The provisions of the Lien Release are appropriate, fair, equitable, and reasonable and are in the best interests of the Debtors, the Debtors' estates, and Holders of Claims and Interests.

### **ORDER**

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED, ADJUDGED, DECREED, AND DETERMINED THAT:

77. **Findings of Fact and Conclusions of Law.** The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact is determined to be a conclusion of law, it is deemed so, and vice versa.

78. **Approval of the Disclosure Statement.** The Disclosure Statement, the Solicitation Packages, and the Solicitation Procedures are approved on a final basis pursuant to section 1125 of the Bankruptcy Code.

79. **Solicitation.** To the extent applicable, the solicitation of votes on the Plan complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, all other provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations, and was appropriate and satisfactory and is approved in all respects.

80. **Notice of Combined Hearing.** The Notice of Combined Hearing was appropriate and satisfactory and is approved in all respects.

81. **Confirmation of the Plan.** The Plan is approved in its entirety and CONFIRMED under section 1129 of the Bankruptcy Code. The terms of the Plan, including the Plan Supplement, are incorporated by reference into and are an integral part of this Confirmation Order.

82. **Objections.** All objections and all reservations of rights pertaining to Confirmation of the Plan and approval of the Disclosure Statement that have not been withdrawn, waived, or consensually resolved are overruled on the merits unless otherwise indicated in this Confirmation Order. All withdrawn objections, if any, are deemed withdrawn with prejudice. All objections to approval of the Disclosure Statement and Confirmation of the Plan not filed and served prior to the Objection Deadline, if any, are deemed waived and shall not be considered by the Court.

83. All parties have had a full and fair opportunity to litigate all issues raised or that might have been raised in the objections to approval of the Disclosure Statement and Confirmation of the Plan, and the objections have been fully and fairly litigated or resolved, including by agreed-upon reservations of rights as set forth in this Confirmation Order.

84. **Plan Modifications.** The Plan Modifications do not materially adversely affect the treatment of any Claim against or Interest in any of the Debtors under the Plan, and are hereby approved pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019. After giving effect to the Plan Modifications, the Plan continues to meet the requirements of sections 1122 and 1123 of the Bankruptcy Code. The filing with the Court on February 28, 2023 of the modifications to the Plan and the disclosure of any additional Plan Modifications on the



record at the Combined Hearing constitute due and sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

85. **Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Interests who voted to accept the Plan or who are conclusively presumed to accept the Plan are deemed to have accepted the Plan, as modified by the Plan Modifications. No Holder of a Claim or Interest shall be permitted to change its vote as a consequence of the Plan Modifications.

86. **Restructuring Transactions.** On or before the Effective Date, the applicable Debtors will take any action as may be necessary or advisable to effectuate the Restructuring Transactions described in the Plan, the Restructuring Transactions Memorandum, and the Customer Onboarding Protocol, including: (a) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (d) the transfer or distribution of any Cryptocurrency or Cash pursuant to the Asset Purchase Agreement and the Plan, as applicable;

(e) the execution and delivery of the Plan Administrator Agreement; (f) any transactions necessary or appropriate to form the Wind-Down Debtor; (g) such other transactions that are required to effectuate the Restructuring Transactions, including any sales, mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (h) all transactions necessary to provide for the purchase of the Acquired Assets by Purchaser under the Asset Purchase Agreement; and (i) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

87. This Confirmation Order shall, and shall be deemed to, pursuant to sections 1123 and 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including ~~the Restructuring Transactions~~, as applicable, the Sale Transaction, ~~and the Liquidation Transaction, as applicable~~, and the Restructuring Transactions, including, for the avoidance of doubt, entry into any agreements following the Confirmation Date by the Debtors, the Purchaser, and any of the Unsupported Jurisdictions in connection with Distributions contemplated to be made by Purchaser to Users and Eligible Creditors (as such terms are defined in the Asset Purchase Agreement) located in Unsupported Jurisdictions, pursuant to and in accordance with the Plan and the Asset Purchase Agreement.

88. **The Sale Transaction.** The Sale Transaction and the Asset Purchase Agreement, all other ancillary documents, and all of the terms and conditions thereof, are hereby approved, pursuant to sections 105, 363, 364, and 554 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004, and 9014, each as applicable. Entry of this Confirmation Order shall authorize the Debtors, the Purchaser, and the Wind-Down Debtor, as applicable, to undertake the transactions

contemplated by the Asset Purchase Agreement, as applicable, including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code.

89. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to (a) consummate the Sale Transaction pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement, (b) close the Sale Transaction as contemplated in the Asset Purchase Agreement, and (c) execute and deliver, perform under, consummate, implement, and fully close the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement and the Sale Transaction.

90. Subject to the restrictions set forth in this Confirmation Order, the Plan, and the Asset Purchase Agreement, the Debtors and the Purchaser hereby are authorized to take any and all actions as may be necessary or desirable, including any actions that otherwise would require further approval by shareholders, members, or its board of directors, as the case may be, without the need of obtaining such approvals, to implement the Sale Transaction, and any actions taken by the Debtors or the Purchaser necessary or desirable to implement the Sale Transaction prior to the date of this Confirmation Order, hereby are approved and ratified.

91. This Confirmation Order and the terms and provisions of the Asset Purchase Agreement shall be binding in all respects upon the Debtors, their affiliates, their estates, all creditors of and holders of equity interests in any Debtor, any holders of Liens, Claims, or other interests (whether known or unknown) in, against, or on all or any portion of the Acquired Assets, all counterparties to any executory contract or unexpired lease of the Debtors, the Purchaser and all successors and assigns of the Purchaser, the Acquired Assets, and any trustees,

examiners, or receivers, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Confirmation Order and the Asset Purchase Agreement shall inure to the benefit of the Debtors, their estates and creditors, the Purchaser, and the respective successors and assigns of each of the foregoing.

92. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Acquired Assets in accordance with the terms of the Asset Purchase Agreement and such transfer shall constitute a legal, valid, binding, and effective sale of the Acquired Assets and shall vest Purchaser with title to the Acquired Assets subject to the Asset Purchase Agreement, and the Acquired Assets shall be free and clear of all Liens, Claims, Encumbrances, and other interests of any kind or nature whatsoever (other than as expressly permitted under the Asset Purchase Agreement), with all such Liens, Claims, or other interests to attach to the cash proceeds of the Purchase Price ultimately attributable to the property against or in which such Liens, Claims, or other interests are asserted, subject to the terms thereof, with the same validity, force, and effect, and in the same order of priority, which such Liens, Claims, or other interests had prior to the Transaction, subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

93. The sale of the Acquired Assets to the Purchaser pursuant to the Asset Purchase Agreement and the consummation of the transactions contemplated by the Asset Purchase Agreement do not require any consents other than as specifically provided for in the Asset Purchase Agreement. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement. A

certified copy of this Confirmation Order may be filed with the appropriate clerk or recorded with the recorder of any state, county, or local authority to act to cancel any of the Liens, Claims, and other encumbrances of record.

94. If any person or entity that has filed statements or other documents evidencing Claims or Liens on, or interests in, all or any portion of the Acquired Assets shall not have delivered to the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Claims, Liens, or interests which the person or entity has or may assert with respect to all or any portion of the Acquired Assets, the Debtors are hereby authorized, and the Purchaser is hereby authorized, on behalf of the Debtors and the Debtors' creditors, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets. The Debtors and the Purchaser are each authorized to file a copy of this Confirmation Order, which, upon filing, shall be conclusive evidence of the release and termination of such Claim, Lien or interest.

95. This Confirmation Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby directed to accept for filing any and all

of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

96. All persons and entities that are presently, or on the Closing may be, in possession of some or all of the Acquired Assets pursuant to the Asset Purchase Agreement are hereby directed to surrender possession of the Acquired Assets to the Purchaser unless such person or entity was a good faith, bona fide purchaser of the Acquired Assets without notice of the Debtors' rights in such property. Subject to the terms, conditions, and provisions of this Confirmation Order, all persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and/or transfer the Acquired Assets to the Purchaser in accordance with the terms of the Asset Purchase Agreement and this Confirmation Order.

97. Except as otherwise permitted by the Asset Purchase Agreement, the Plan, or this Confirmation Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding Liens, Claims, or other interests of any kind or nature whatsoever against or in all or any portion of the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinate), arising under or out of, in connection with, or in any way relating to the Debtors, the Acquired Assets, the operation of the Debtors' business prior to the closing of the Sale Transaction, or the transfer of the Acquired Assets to the Purchaser, hereby are forever barred, estopped and permanently enjoined from asserting against the Purchaser, any of the foregoing's affiliates, successors, or assigns, their property or the Acquired Assets, such persons' or entities' Liens, Claims, or interests in and to the Acquired

Assets, including, without limitation, the following actions: (a) commencing or continuing in any manner any action or other proceeding against the Purchaser and each of its affiliates, successors, assets or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser and each of its affiliates, successors, assets, or properties; (c) creating, perfecting, or enforcing any Lien or other Claim against the Purchaser and each of its affiliates, successors, assets, or properties; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Purchaser, its affiliates or its successors; or (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Confirmation Order, or the agreements or actions contemplated or taken in respect thereof.

98. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Acquired Assets to the Purchaser in accordance with the terms of the Asset Purchase Agreement, the Plan, and this Confirmation Order.

99. Purchaser shall have no Liability (as defined in the Asset Purchase Agreement) for any Excluded Liability, and, other than as expressly set forth in the Asset Purchase Agreement, Purchaser is not assuming, by virtue of the consummation of the Sale Transaction, nor shall the Purchaser be liable or responsible for, as a successor or otherwise (including under any theory of successor or vicarious liability of any kind or character or any other theory of law or equity, including any theory of antitrust, environmental successor or transferee liability, labor law, *de facto* merger, or substantial continuity (including under applicable Money Transmitter Requirements or any securities or commodities Laws of any Governmental Body)):



- (i) any Liability (as defined in the Asset Purchase Agreement), debts, commitments, or obligations of the Debtors or any of their predecessors or affiliates or any obligations of the Debtors or their predecessors or affiliates, in all cases whether known or unknown, disclosed or undisclosed, now existing or hereafter arising, asserted or unasserted, fixed or contingent, choate or inchoate, liquidated or unliquidated, and in all cases to the extent relating to or arising from, in any way whatsoever, the Acquired Assets or the Debtors' operation of their businesses or use of the Acquired Assets or any such liabilities, debts, commitments, or obligations that in any way whatsoever are to be observed, paid, satisfied, compromised, or performed (in each case, including any liabilities that result from, relate to or arise out of tort or product liability claims), or
- (ii) any Liability (as defined in the Asset Purchase Agreement) calculable by reference to the Debtors or their assets or operations, or relating to the operation of the Debtors' businesses prior to the Closing of the Sale Transaction, or relating to continuing conditions existing, including with respect to any of Debtors' predecessors or affiliates, which liabilities, debts, commitments, and obligations are hereby extinguished insofar as they may give rise to successor liability, without regard to whether the claimant asserting any such liabilities, debts, commitments, or obligations has delivered to the Purchaser a release thereof.

For the avoidance of doubt, (i) nothing herein shall release the Purchaser with respect to its obligations as Distribution Agent of Cryptocurrency and Cash to Holders of Account Holder Claims and OpCo General Unsecured Creditor Claims as provided in, and subject to the terms and conditions of, the Asset Purchase Agreement and the Plan, and (ii) notwithstanding the transfer to Purchaser, pursuant to the Asset Purchase Agreement, of any Acquired Assets that constitute Coins or Cash, each User and Eligible Creditor shall retain, from and after the Closing of the Sale Transaction, all right, title, and interest in and to such Coins and Cash allocated to it on the Binance.US Platform in accordance with the Asset Purchase Agreement (notwithstanding any terms and conditions of the Binance.US Platform to the contrary, if any) through and including such time as such Coins and Cash are returned or distributed to Seller or such User and Eligible Creditor, as applicable, and such Coins and Cash shall be held by Purchaser solely in a custodial capacity in trust and solely for the benefit of Seller or the applicable User or Eligible Creditor.

100. The Asset Purchase Agreement and any related documents or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court.

101. Paragraphs 88–100 of this Confirmation Order shall be deemed to be excised from this Confirmation Order in the event that the Asset Purchase Agreement is terminated prior

to Closing. For the avoidance of doubt, subject to the requirements set forth in the Asset Purchase Agreement (including, without limitation, Sections 6.22 and 5.2(c) thereof), the Debtors may exercise the “fiduciary out” in Section 8.1(g) of the Asset Purchase Agreement at any time prior to Closing.

102. **Corporate Action.** Upon the Effective Date, all actions contemplated under the Plan shall be deemed authorized and approved in all respects, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, managing-members, limited or general partners, or officers of the Debtors, the Wind-Down Debtor, or any other Entity.

103. All matters provided for in the Plan involving the corporate structure of the Debtors or the Wind-Down Debtor, as applicable, and any corporate action required by the Debtors or the Wind-Down Debtor, as applicable, in connection with the Plan shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Wind-Down Debtor, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Wind-Down Debtor, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Wind-Down Debtor, and any and all other agreements, documents, and instruments relating to the foregoing. The authorizations and approvals contemplated by Article IV.J of the Plan shall be effective notwithstanding any requirements under non-bankruptcy law.

104. As soon as practicable after the Effective Date, the Wind-Down Debtor shall take such actions as the Wind-Down Debtor may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Wind-Down Debtor on behalf of any Wind-Down Debtor without need for any action or approval by the shareholders or board of directors or managers of such Debtor. On and after the Effective Date, the Debtors or the Wind-Down Debtor (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to the Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. Pursuant to the terms of the Plan, any Money Transmitter Licenses that have not been terminated shall be deemed withdrawn and no further action is required to be taken by the Debtors or the Wind-Down Debtor to effectuate such withdrawal; *provided* that, following the Effective Date, the Debtors or the Wind-Down Debtor, as applicable, shall use commercially reasonable efforts to comply with all state banking department requirements for the surrender of a Money Transmitter License. Notwithstanding such Debtors' dissolution, such Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

105. **Binding Effect.** Upon the occurrence of the Effective Date, the terms of the Plan are immediately effective and enforceable and deemed binding on the Debtors, the Wind-Down Debtor, any and all Holders of Claims or Interests (regardless of whether such Holders of Claims or Interests have, or are deemed to have, accepted the Plan), all Entities that are parties to or are

subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or this Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

106. Pursuant to section 1141 of the Bankruptcy Code, subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Confirmation Order, all prior orders entered in these Chapter 11 Cases and all documents and agreements executed by the Debtors as authorized and directed thereunder as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors, the Purchaser, or the Wind-Down Debtor, as applicable, and their respective successors and assigns.

107. **Vesting of Assets.** Except as otherwise provided in the Plan, this Confirmation Order, the Asset Purchase Agreement, the Schedule of Retained Causes of Action, or in any agreement, instrument, or other documented incorporated herein or therein, or in any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, notwithstanding any prohibition of assignability under applicable non-bankruptcy law and in accordance with section 1141 of the Bankruptcy Code, on the Effective Date, all property constituting Wind-Down Debtor Assets, including all Vested Causes of Action of the Debtors (unless otherwise released, waived, compromised, settled, satisfied, or transferred pursuant to the Plan) shall vest in the Wind-Down Debtor, free and clear of all Liens, Claims, charges, or other encumbrances.

108. Prior to the Effective Date, any and all of the Debtors' assets shall remain assets of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and on the Effective

Date the Wind-Down Debtor Assets shall, subject to the Plan Administrator Agreement, be transferred to and vest in the Wind-Down Debtor. For the avoidance of doubt, to the extent not otherwise waived in writing, released, settled, compromised, assigned, or sold pursuant to a prior order or the Plan, the Plan Administrator specifically retains and reserves the right to assert, after the Effective Date, any and all of the Vested Causes of Action and related rights, whether or not asserted as of the Effective Date, and all proceeds of the foregoing, subject to the terms of the Plan, including without limitation Article IV.F.

109. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, only the Wind-Down Debtor and the Plan Administrator shall have the right to pursue or not to pursue, or, subject to the terms hereof and the Plan Administrator Agreement, compromise or settle any Wind-Down Debtor Assets transferred to the Wind-Down Debtor. On and after the Effective Date, the Wind-Down Debtor and the Plan Administrator may, without further Court approval, commence, litigate, and settle any Vested Causes of Action or Claims relating to any Wind-Down Debtor Assets transferred to the Wind-Down Debtor or rights to payment or Claims that belong to the Debtors as of the Effective Date or are instituted by the Wind-Down Debtor and Plan Administrator on or after the Effective Date, except as otherwise expressly provided herein and in the Plan Administrator Agreement. The Wind-Down Debtor shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code.

110. Notwithstanding any prohibition on assignability under applicable non-bankruptcy law, on the Effective Date and thereafter if additional Wind-Down Debtor Assets become available, the Debtors shall be deemed, subject to the Plan Administrator Agreement, to have automatically transferred to the applicable Wind-Down Debtor all of their

right, title, and interest in and to all of the Wind-Down Debtor Assets, in accordance with section 1141 of the Bankruptcy Code. All such assets shall automatically vest in the Wind-Down Debtor free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims and Interests as set forth in the Plan and the expenses of the Wind-Down Debtor as set forth in the Plan and in the Plan Administrator Agreement. Thereupon, the Debtors shall have no interest in or with respect to the Wind-Down Debtor Assets or the Wind-Down Debtor.

111. On the Effective Date, the Debtors or Plan Administrator, as applicable, may establish one or more accounts or funds to hold and dispose of certain assets, pursue certain litigation (including the Vested Causes of Action), and/or satisfy certain Claims (including Claims that are contingent or have not yet been Allowed). For any such account or fund, the Debtors or the Plan Administrator, as applicable, may take the position that grantor trust treatment applies in whole or in part. To the extent such treatment applies to any such account or fund, for all U.S. federal income tax purposes, the beneficiaries of any such account or fund would be treated as grantors and owners thereof, and it is intended, to the extent reasonably practicable, that any such account or fund would be classified as a liquidating trust under section 301.7701-4 of the Treasury Regulations. Alternatively, any such account or fund may be subject to the tax rules that apply to “disputed ownership funds” under 26 C.F.R. 1.468B-9. If such rules apply, such assets would be subject to entity-level taxation, and the Debtors and Plan Administrator would be required to comply with the relevant rules.

112. **Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Sale Transaction or the Liquidation Transaction, as applicable, are hereby effective and authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to, or order of the Court, or further



action by the respective officers, directors, managers, members, or equity holders of the Debtors or the Wind-Down Debtor and with the effect that such actions had been taken by unanimous action of such officers, directors, managers, members, or equity holders.

113. **Cancellation of Notes, Instruments, Certificates, and Other Documents.** On the later of the Effective Date and the date on which distributions are made pursuant to the Plan (if not made on the Effective Date), except for the purpose of evidencing a right to and allowing Holders of Claims and Interests to receive a distribution under the Plan or to the extent otherwise specifically provided for in the Plan, this Confirmation Order, or any agreement, instrument, or other document entered into in connection with or pursuant to the Plan or the Restructuring Transactions, all notes, bonds, indentures, certificates, Securities, shares, purchase rights, options, warrants, collateral agreements, subordination agreements, intercreditor agreements, or other instruments or documents directly or indirectly evidencing, creating, or relating to any indebtedness or obligations of, or ownership interest in, the Debtors, giving rise to any Claims against or Interests in the Debtors or to any rights or obligations relating to any Claims against or Interests in the Debtors shall be deemed cancelled without any need for a Holder to take further action with respect thereto.

114. For the avoidance of doubt, cancellation of Existing Equity Interests pursuant to the Plan shall not affect the rights of the Holders of Existing Equity Interests to receive distributions, if any, under the Plan on account of such Existing Equity Interests. Holders of Existing Equity Interests shall continue to possess all rights, powers, privileges, and standing associated with such Existing Equity Interests as if those Existing Equity Interests continue to exist subject to the terms of the Plan and this Confirmation Order.

115. **Distributions.** The procedures governing distributions contained in Article VI of the Plan shall be, and hereby are, approved in their entirety. Except as otherwise set forth in the Plan or this Confirmation Order, the Plan Administrator shall make all distributions required under the Plan and the timing of distributions required under the Plan or this Confirmation Order shall be made in accordance with and as set forth in the Plan, this Confirmation Order, or the Plan Administrator Agreement, as applicable; *provided* that, if a creditor does not timely provide the Plan Administrator with its taxpayer identification number in the manner and by the deadline established by the Plan Administrator and/or the Plan, the creditor shall be deemed to have forfeited its right to any current, reserved or future distributions provided for under the Plan and such creditor's Claim or Interest shall be disallowed and expunged without further order of the Court. Any such forfeited distribution shall be deemed to have reverted back to the Wind-Down Debtor for all purposes, including for distributions to other holders of Allowed Claims or Allowed Interests (as applicable) against the particular Debtor in respect of which the forfeited distribution was made, notwithstanding any federal, provincial or state escheat, abandoned or unclaimed property law to the contrary.

116. **Claims Register.** Any Claim or Interest that has been paid, satisfied, amended, superseded, cancelled, or otherwise expunged (including pursuant to the Plan) may be adjusted or expunged, as applicable, on the Claims Register at the direction of the Debtors or Wind-Down Debtor without the Debtors or Wind-Down Debtor having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Court.

117. **Preservation of Rights of Action.** In accordance with section 1123(b) of the Bankruptcy Code, the Wind-Down Debtor shall succeed to all rights to commence and pursue

any and all Vested Causes of Action of the Debtors, whether arising before or after the Petition Date, including, without limitation, any actions specifically enumerated in the Schedule of Retained Causes of Action other than Causes of Action released, waived, settled, compromised, or transferred. Such rights shall be preserved by the Debtors and Wind-Down Debtor and shall vest in the Wind-Down Debtor, with the Wind-Down Debtor's rights to commence, prosecute, or settle such Causes of Action preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action expressly released, waived, settled, compromised, or transferred by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan or pursuant to the Asset Purchase Agreement, which shall be deemed released and waived by the Debtors and the Wind-Down Debtor as of the Effective Date.

118. The Wind-Down Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the beneficiaries of the Wind-Down Debtor and in accordance with the Plan Administrator Agreement and the Plan. No Entity may rely on the absence of a specific reference in the Schedules of Assets and Liabilities or Statement of Financial Affairs, the Plan, the Plan Supplement, the Disclosure Statement, or the Schedule of Retained Causes of Action to any Cause of Action against it as any indication that the Debtors or the Wind-Down Debtor will not pursue any and all available Causes of Action against it. The Wind-Down Debtor, on behalf of the Debtors and the Wind-Down Debtor, expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise provided in the Plan, including Article VIII of the Plan. Unless any Cause of Action of the Debtors is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or pursuant to a Final Order, the Wind-Down Debtor, on behalf of the Debtors and Wind-Down Debtor and in accordance with the Plan Administrator Agreement, expressly reserves all such

Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation.

119. The Wind-Down Debtor, on behalf of the Debtors and the Wind-Down Debtor, reserves and shall retain such Causes of Action of the Debtors notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold against any Entity shall vest in the Wind-Down Debtor, except as otherwise provided in the Plan, including Article VIII of the Plan. The Wind-Down Debtor, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Wind-Down Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Court in accordance with the Plan.

120. **Subordination.** Except as expressly provided in the Plan, the allowance, classification, and treatment of all Allowed Claims against and Allowed Interests in the Debtors and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Wind-Down

Debtor reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

121. **Release of Liens.** Except as otherwise provided in the Plan, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan or this Confirmation Order on the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or Wind-Down Debtor, as applicable, and their successors and assigns, in each case, without any further approval or order of the Court and without any action or Filing being required to be made by the Debtors. The presentation or filing of this Confirmation Order to or with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

122. **Governance of the Wind-Down Debtor.** The Plan Administrator shall appoint an independent director at each Debtor to act as a fiduciary for such Debtor entity in connection with the resolution of the Intercompany Claims.

123. **Intercompany Claims.** For the avoidance of doubt, nothing in this Confirmation Order or the Plan shall have any impact on the validity, extent, priority, or treatment of the Intercompany Claims. Any determination as to the validity, extent, priority, or treatment of the Intercompany Claims shall be determined by the Court in a separate matter on proper notice to parties in interest. Notwithstanding anything to the contrary in this Confirmation Order or the

Plan, the rights of the ad hoc group of equityholders (the “AHG”) to continue or participate in any adjudication of the Intercompany Claims are preserved, and any party reserves any and all rights, claims, and defenses in connection therewith, including without limitation, the Debtors and/or the Wind-Down Debtor’s right to challenge the AHG’s standing with respect thereto; *provided* that such right, claim, or defense is not based on any provision in this Confirmation Order or the Plan.

124. **FTX Settlement.** Pursuant to the terms of the FTX Settlement, the Debtors shall reserve and hold the amount of \$445 million in Cash on account of the Preference Claims (as defined in the FTX Settlement) asserted by FTX, Alameda, and their estates in the FTX Bankruptcy Proceeding, subject to all defenses and counterclaims thereto, until the final resolution of the Preference Claims by settlement or a final and unappealable order by the court in the FTX Bankruptcy Proceeding, including any appeals therefrom.

125. **General Settlement of Claims and Interests.** As discussed in detail in the Disclosure Statement and as otherwise provided in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of this Confirmation Order shall constitute the Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as

well as a finding by the Court that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

126. **Third-Party Releases.** For the avoidance of doubt, any party that did not affirmatively “opt in” to the Third-Party Releases contained in the Plan shall not be deemed to grant such Third-Party Releases contained in the Plan.

127. **Contributed Third Party Claims.** For the avoidance of doubt, any party that did not affirmatively “opt in” to contribute their Contributed Third-Party Claims to the Wind-Down Debtor shall not be deemed to contribute their claims to the Wind-Down Debtor; *provided, however*, that any party may contribute their Contributed Third-Party Claims to the Wind-Down Debtor on or after the Effective Date by separate agreement with the Plan Administrator and Wind-Down Debtor. Any such agreement shall be valid to the same extent as if the party affirmatively opted in to contribute their Contributed Third-Party Claims to the Wind-Down Debtor.

128. **Operations After Closing.** On and after the Effective Date, except as otherwise provided in the Plan, the Debtors or the Wind-Down Debtor may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

129. **Assumption and Rejection of Executory Contracts and Unexpired Leases.** On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any



employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (a) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (b) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (c) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (d) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (e) is a D&O Liability Insurance Policy other than the Side-A Policy. Entry of this Confirmation Order constitutes approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Except as otherwise provided in this Confirmation Order, any and all objections or reservations of rights in connection with the rejection of an Executory Contract or Unexpired Lease under the Plan, if any, are overruled on their merits.

130. **Waiver or Estoppel.** Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed prior to the Confirmation Date.

131. **Insurance Policies and Surety Bonds.** Each D&O Liability Insurance Policy (including, without limitation, any “tail policy” and all agreements, documents, or instruments related thereto) other than the Side-A Policy shall be assumed, in their entirety, without the need for any further notice to or action, order, or approval of the Court, as of the Effective Date, pursuant to sections 105 and 365 of the Bankruptcy Code with the Wind-Down Debtor being authorized to pursue any proceeds thereof on behalf of the Debtors or the Wind-Down Debtor. The Side-A Policy shall remain in effect during these Chapter 11 Cases with the Debtors, and the Wind-Down Debtor preserves all avoidance and other actions in connection with the premium paid thereunder. All beneficiaries under the D&O Insurance Policies reserve their rights under such D&O Insurance Policies subject to the limitations set forth in the Plan.

132. The Debtors or the Wind-Down Debtor, as applicable, shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policy (including, without limitation, any “tail policy” and all agreements, documents, or instruments related thereto) in effect prior to the Effective Date, and subject in all respects to the D&O Settlement, any current and former directors, officers, managers, and employees of the Debtors who served in such capacity at any time before or after the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy subject to the terms thereof regardless of whether such directors, officers, managers, and employees remain in such positions after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Debtors or the Wind-Down Debtor shall retain the ability to supplement such D&O Liability Insurance Policy as the Debtors or Wind-Down Debtor may deem necessary, subject to the prior written consent of the Wind-Down Debtor.

133. The Debtors shall continue to satisfy their obligations under their insurance policies in full and continue such programs in the ordinary course of business. Each of the Debtors' insurance policies, and any agreements, documents, or instruments relating thereto shall be treated as Executory Contracts under the Plan. On the Effective Date: (a) the Debtors shall be deemed to have assumed all such insurance policies and any agreements, documents, and instruments relating thereto in their entirety and (b) such insurance policies and any agreements, documents, or instruments relating thereto shall revert in the applicable Wind-Down Debtor(s) unaltered.

134. **Authorization to Consummate.** The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to consummation as set forth in Article IX of the Plan.

135. **Professional Compensation.** All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than sixty (60) days after the Effective Date. The Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules. The Wind-Down Debtor shall pay Professional Fee Claims in Cash to such Professionals in the amount the Court allows, including from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by entry of an order of the Court; *provided* that the Debtors' and the Wind-Down Debtor's obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account.

136. No later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. No funds held in the Professional Fee Escrow Account shall be property of the Estates of the Debtors or the Wind-Down Debtor. When all Professional Fee Claims Allowed by the Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Court, any remaining funds held in the Professional Fee Escrow Account shall be turned over to the Wind-Down Debtor without any further notice to or action, order, or approval of the Court or any other Entity.

137. The Professionals shall deliver to the Debtors a reasonable and good-faith estimate of their unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, and shall deliver such estimate no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Fee Claims Filed with the Court, and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated to be outstanding as of the anticipated Effective Date shall be utilized by the Debtors to determine the amount to be funded to the

Professional Fee Escrow Account; provided that the Wind-Down Debtor shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

138. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors and/or the Wind-Down Debtor, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Wind-Down Debtor. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtor may employ and pay any Professional in the ordinary course of business for the period after the Confirmation Date without any further notice to or action, order, or approval of the Court.

139. **Return of Deposits.** All utilities, including, but not limited to, any Person or Entity that received a deposit or other form of adequate assurance of performance under section 366 of the Bankruptcy Code during these Chapter 11 Cases, must return such deposit or other form of adequate assurance of performance to the Wind-Down Debtor promptly following the occurrence of the Effective Date, if not returned or applied earlier.

140. **Release, Exculpation, and Injunction Provisions.** The release, exculpation, injunction, opt in, and related provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all Persons and Entities to the extent provided therein except as otherwise provided in this Confirmation Order, *provided*,

however, that nothing in the exculpation related provisions of the Plan shall release the Debtors from the provisions of the Plan governing satisfaction of Allowed Claims including Allowed Administrative Expense Claims or change the standard for liability on Allowed Claims or Allowed Administrative Expense Claims, subject to any applicable bankruptcy and non-bankruptcy law.

141. For the avoidance of doubt, the Debtors are not seeking a discharge under section 1141(d).

142. ~~141.~~ Governmental Units. Nothing in this Confirmation Order or the Plan shall effect a release ~~of any claim~~ by the United States, the States or any of ~~its~~their agencies of any claim arising under the Internal Revenue Code, the environmental laws or any civil or criminal laws of the United States or the States, or under any rules or regulations enforced by the United States, the States or any of ~~its~~their agencies against the Released Parties, nor shall anything in the Confirmation Order or the Plan enjoin the United States or the States from bringing any claim, suit, action or other proceedings against the Released Parties for any liability for any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any civil or criminal laws of the United States or the States, or under any rules or regulations enforced by the United States, the States or any of ~~its~~their agencies, nor shall anything in the Confirmation Order or the Plan exculpate any such party from any liability to the United States, the States or any of ~~its~~their agencies, arising under the Internal Revenue Code, the environmental laws or any civil or criminal laws of the United States or the States, or under any rules or regulations enforced by the United States, the States or any of ~~its~~their agencies; *provided*, however, that nothing in this Confirmation Order or the Plan shall modify in any respect the relief previously granted in the Bar Date Order and thus no person or entity, including the United

States, the States or any of ~~its~~their agencies, can seek or receive a direct or indirect distribution of any property of the Debtors' estates unless they filed a Proof of Claim prior to the Governmental Bar Date; provided, further, that the United States, the States, and their agencies may not, and will not, allege that the Restructuring Transactions are a violation of any rules or regulations enforced by the United States, the States or any of their agencies, nor will they bring any claim against any Person on account of or relating to the Restructuring Transactions.

143. Nothing in this Confirmation Order, the Disclosure Statement, the Plan, or the Asset Purchase Agreement releases, precludes, or enjoins: (i) any liability to any governmental unit as defined in 11 U.S.C. § 101(27) ("Governmental Unit") that is not a "claim" as defined in 11 U.S.C. § 101(5) ("Claim"); (ii) any Claim of a Governmental Unit arising on or after the Effective Date; or (iii) any liability to a Governmental Unit on the part of any non-Debtor (except to the extent set forth in paragraphs 97 and 99 herein); provided, however, that nothing in this Confirmation Order or the Plan shall modify in any respect the relief previously granted in the Bar Date Order; provided, further, that no Governmental Unit will allege that the Restructuring Transactions are a violation of any rules or regulations enforced by the United States, the States or any of their agencies, nor will they bring any claim against any Person on account of or relating to the Restructuring Transactions. Nothing in this Confirmation Order, the Disclosure Statement, the Plan, or the Asset Purchase Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, without compliance with all applicable legal requirements.

144. ~~142.~~ **Securities and Exchange Commission Provisions.** Notwithstanding anything to the contrary in this Confirmation Order, or any findings announced at the Combined Hearing, nothing in this Confirmation Order, or announced at the Combined Hearing, constitutes



a finding under the federal securities laws as to whether crypto tokens or transactions involving crypto tokens are securities, and the right of the SEC to challenge transactions involving crypto tokens on any basis is expressly reserved.

145. ~~143.~~ Notwithstanding any provision herein to the contrary, nothing in this Confirmation Order or the Plan grants this Court ~~with~~ jurisdiction over any police and regulatory actions by the SEC, and the SEC shall retain the power and authority to commence and continue any such actions against any person or entity, including without limitation, the Debtors, in any forum with jurisdiction; *provided*, however, that nothing in this Confirmation Order or the Plan shall modify in any respect the relief previously granted in the Bar Date Order ~~and thus no person or entity, including the United States or any of its agencies, can seek or receive a direct or indirect distribution of any property of the Debtors' estates unless they filed a Proof of Claim prior to the Governmental Bar Date;~~ *provided, however, that the SEC will not allege that the Restructuring Transactions are a violation of any rules or regulations enforced by the SEC, nor will they bring any claim against any Person on account of or relating to the Restructuring Transactions.*

146. ~~144.~~ Upon the occurrence of the Effective Date, the Debtors' books and records shall be transferred to the Wind-Down Debtor, which shall continue to preserve all financial books and records, emails, and other financial documents relating to the Debtors' business that are currently in the Debtors' possession. The Wind-Down Debtor shall not destroy or otherwise abandon any such documents or records without providing advance notice to the SEC (c/o Therese Scheuer, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, ScheuerT@SEC.GOV) and seeking further authorization from this Court. Nothing in the Plan or this Confirmation Order shall affect the obligations of the pre-Effective Date Debtors,

the Wind-Down Debtor, and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

147. ~~145.~~ Notwithstanding any language to the contrary herein, no provision in the Plan or this Confirmation Order shall (a) preclude the OSC or the SEC from enforcing its police or regulatory powers or (b) enjoin, limit, impair or delay the OSC or SEC from commencing or continuing any claims, causes of action, proceeding, or investigations against any non-Debtor person or non-Debtor entity in any forum.

148. ~~146.~~ **Employee Transition Plan.** The Employee Transition Plan, the terms of which are included in the Plan Supplement as Exhibit H, will be implemented following the Effective Date and is not subject to the Court's approval.

149. ~~147.~~ **Compliance with Tax Requirements.** In connection with the Plan, to the extent applicable, the Debtors, the Wind-Down Debtor, any Distribution Agent, and any other applicable withholding and reporting agents shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including winding-down a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms that are reasonable and appropriate; *provided* that the Wind-Down Debtor and the Distribution

Agent, as applicable, shall request appropriate documentation from the applicable distributees and allow such distributees a reasonable amount of time to respond. The Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

150. ~~148.~~ **Exemption from Certain Taxes and Fees.** To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Debtor, the Wind-Down Debtor, the Purchaser, or to any other Entity) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Wind-Down Debtor; (b) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; or (d) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, including the Asset Purchase Agreement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for

filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

151. ~~149.~~ **Termination of Asset Purchase Agreement.** If the Asset Purchase Agreement is terminated and the Sale Transaction is not consummated, all provisions in this Confirmation Order relating to the Asset Purchase Agreement, the Sale Transaction, and the Purchaser shall be of no force and effect, and the Debtors are authorized to consummate the Liquidation Transaction without further order of the Court.

152. ~~150.~~ **The Liquidation Transaction.** If the Asset Purchase Agreement is terminated, the Debtors shall pursue the Liquidation Transaction contemplated under the Plan and shall provide all Holders of Claims and Interests with the treatment afforded to such Holders under the Plan. In the event that the Debtors determine to pursue the Liquidation Transaction contemplated under Article IV of the Plan, the Debtors shall promptly notify the Court and all parties in interest. The Plan shall be deemed to satisfy all requirements under the Bankruptcy Code with respect to either the Sale Transaction or the Liquidation Transaction pursuant to this Confirmation Order.

153. ~~151.~~ **Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all

documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring Transactions, and this Confirmation Order.

154. ~~152.~~ **The BNY Objection.** This Confirmation Order confirms that the Deed of Trust and Assignment of Rents recorded January 5, 2023 Official Records of Orange County (the “Deed”) transferring title of 37 Black Hawk, Irvine, California 92603 (the “Property”) from Michael G. Beason and Mickey L. Wiebeis (collectively, the “Property Borrowers”) to Voyager Digital, LLC is void. This Confirmation Order may be recorded against the Property as evidence and confirmation that the Deed is void. The Bank Of New York Mellon f/k/a the Bank Of New York, As Trustee For The Certificateholders Of CWALT, Inc., Alternative Loan Trust 2005-38, Mortgage Pass-Through Certificates, Series 2005-38 as Serviced by Shellpoint Mortgage Servicing (“Shellpoint”) shall be permitted to take any other the necessary actions to void the Deed. To the extent necessary, the automatic stay is lifted solely as it pertains to Shellpoint’s rights to take action against the Property and shall be effective immediately upon entry of this Confirmation Order. The Debtor(s) shall not be party to any foreclosure or other proceeding related to the Property as they lack any interest in the Property. Shellpoint shall release the Debtors and the Wind-Down Debtor of any costs and claims incurred on account of the Property, including any actions taken in any foreclosure or other proceeding or associated with voiding the Deed. This Confirmation Order shall in no way prevent Shellpoint from pursuing any and all lawful rights and remedies as to the Property Borrowers.

155. ~~153.~~ **Continued Effect of Stays and Injunction.** Unless otherwise provided in the Plan or this Confirmation Order, all injunctions or stays arising under or entered during these Chapter 11 Cases under section 362 of the Bankruptcy Code or otherwise and in existence on the

Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

156. ~~154.~~ **Non-Severability.** Each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' consent, consistent with the terms set forth herein; and (c) non-severable and mutually dependent.

157. ~~155.~~ **Notice of Subsequent Pleadings.** Except as otherwise provided in the Plan or in this Confirmation Order, notice of all subsequent pleadings in these Chapter 11 Cases after the Effective Date will be limited to the following parties: (a) the Wind-Down Debtor and its counsel; (b) the U.S. Trustee; (c) counsel to the Purchaser; (d) any party known to be directly affected by the relief sought by such pleadings; and (e) any party that specifically requests additional notice in writing to the Debtors, the Wind-Down Debtor, or the Plan Administrator, as applicable, or files a request for notice under Bankruptcy Rule 2002 after the Effective Date. The Notice and Claims Agent shall not be required to file updated service lists.

158. ~~156.~~ **Post-Confirmation Modifications.** Subject to the limitations and terms contained in the Plan and Purchaser's consent rights under the Asset Purchase Agreement, the Debtors, with the consent of the Committee, reserve the right to (a) amend or modify the Plan before the entry of this Confirmation Order, in accordance with the Bankruptcy Code and the Bankruptcy Rules and (b) after the entry of this Confirmation Order, the Debtors or the Wind-Down Debtor, as applicable, may, upon order of the Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or

reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth in the Plan.

159. ~~157.~~ **Plan Classification Controlling.** The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of the distributions to be made thereunder and the classifications set forth on the ballots tendered to or returned by the Holders of Claims or Interests in connection with voting on the Plan: (a) were set forth thereon solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of Claims and Interests under the Plan for distribution purposes; (c) may not be relied upon by any Holder of a Claim or Interest as representing the actual classification of such Claim or Interest under the Plan for distribution purposes; and (d) shall not be binding on the Debtors except for voting purposes.

160. ~~158.~~ **Choice of Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan and any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, documents, instruments, or contracts, in which case the governing law of such agreement shall control); provided that corporate, limited liability company, or partnership governance matters relating to the Debtors or the Wind-Down Debtor, as applicable, shall be governed by the laws of the jurisdiction of incorporation or formation of the relevant Debtor or Wind-Down Debtor, as applicable.



161. ~~159.~~ **Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

162. ~~160.~~ **Waiver of Filings.** Any requirement under section 521 of the Bankruptcy Code or Bankruptcy Rule 1007 obligating the Debtors to file any list, schedule, or statement with the Court or the Office of the U.S. Trustee is permanently waived as to any such list, schedule, or statement not filed as of the Confirmation Date.

163. ~~161.~~ **Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state, federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement. As provided in section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license of the Debtors or Wind-Down Debtor on account of the filing or pendency of the Chapter 11 Cases.

164. ~~162.~~ **Protection Against Discriminatory Treatment.** As provided by section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Entity, including Governmental Units, shall discriminate against any Wind-Down Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, any Wind-Down Debtor, or any Entity with which a Wind-Down Debtor has been or is associated, solely because such Wind-Down Debtor was a debtor under chapter 11 of

the Bankruptcy Code or may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases).

165. ~~163.~~ **Notices of Confirmation and Effective Date.** The Debtors or the Wind-Down Debtor, as applicable, shall serve notice of entry of this Confirmation Order, of the occurrence of the Effective Date, and of applicable deadlines (the “Notice of Confirmation”) in accordance with Bankruptcy Rules 2002 and 3020(c) on all parties served with the Combined Hearing Notice seven Business Days after the Effective Date; *provided* that no notice of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed notice of the Combined Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address,” or “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity’s new address. For those parties receiving electronic service, filing on the docket is deemed sufficient to satisfy such service and notice requirements.

166. ~~164.~~ No later than ten Business Days after the Effective Date, the Wind-Down Debtor shall cause the Notice of Confirmation, modified for publication, to be published on one occasion in *The New York Times* (national edition) and *USA Today* (national edition). Mailing and publication of the Notice of Confirmation in the time and manner set forth in this paragraph will be good, adequate, and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c). No further notice is necessary.

167. ~~165.~~ The Notice of Confirmation will have the effect of an order of the Court, will constitute sufficient notice of the entry of this Confirmation Order to filing and recording officers, and will be a recordable instrument notwithstanding any contrary provision of

applicable nonbankruptcy law. The above-referenced notices are adequate under the particular circumstances of these Chapter 11 Cases and no other or further notice is necessary.

168. ~~166.~~ **Dissolution of Statutory Committees.** On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases; *provided, however*, that such committees will remain in existence for the limited purposes of (a) pursuing, supporting, or otherwise participating in, any outstanding appeals in the Chapter 11 Cases; and (b) filing, objecting, or otherwise participating in, any final fee applications of Professionals.

169. ~~167.~~ **Exemption from Registration.** The Plan Administrator shall hold the equity of the Voyager Digital Ltd., to the extent that any new equity is issued, in an agency capacity, for the benefit of and to facilitate the rights of Holders of Interests provided under the Plan ~~and any~~; *provided that* such equity ~~shall not be deemed “securities” under applicable laws,~~  
*if issued, shall be uncertificated and non-transferable.*

170. ~~168.~~ Distributions to Holders of Claims and Interests in accordance with the Plan shall not be deemed to be unlicensed money transmission ~~or to violate any securities laws.~~

171. ~~169.~~ **Effect of Non-Occurrence of Conditions to Confirmation.** If the Effective Date does not occur within 120 days after the Confirmation Date, then the Plan will be null and void in all respects, any and all compromises or settlements not previously approved by Final Order of the Court embodied in the Plan (including with respect to the fixing, limiting, or treatment of any Claim or Interest), shall be deemed null and void, and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action held by any Debtor or any other Entity; (b) prejudice in any

manner the rights of any Debtor or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity in any respect.

172. ~~170.~~ **Substantial Consummation.** On the Effective Date, the Plan shall be deemed to have been substantially consummated or shall be anticipated to be substantially consummated concurrent with the occurrence of the Effective Date.

173. ~~171.~~ **Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Court.

174. ~~172.~~ **Immediate Binding Effect.** Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Debtor, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, exculpations, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or Interest has voted on the Plan.

175. ~~173.~~ **References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation

Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by reference.

176. ~~174.~~ **Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

177. ~~175.~~ **Effect of Conflict.** This Confirmation Order supersedes any Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall govern and control. For the avoidance of doubt, the *Stipulation and Agreed Order Between the Debtors and Metropolitan Commercial Bank* [Docket No. 821] remains in effect and is not superseded by this Confirmation Order.

178. ~~176.~~ **Final, Appealable Order.** This Confirmation Order is a final judgment, order, or decree for purposes of 28 U.S.C. § 158(a), and the period in which an appeal must be filed shall commence upon the entry hereof.

179. ~~177.~~ **Retention of Jurisdiction.** The Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including (i) the matters set forth in Article XI of the Plan and (ii) as set forth in Section 10.13 of the Asset Purchase Agreement.

New York, New York  
Dated: \_\_\_\_\_, 2023

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THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**The Plan**

Joshua A. Sussberg, P.C.  
 Christopher Marcus, P.C.  
 Christine A. Okike, P.C.  
 Allyson B. Smith (admitted *pro hac vice*)  
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**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

_____	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
_____	)	

**NOTICE OF FILING OF THIRD AMENDED JOINT  
 PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND ITS DEBTOR  
 AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

**PLEASE TAKE NOTICE** that on July 6, 2022, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Initial Plan”) [Docket No. 17].

**PLEASE TAKE FURTHER NOTICE** that on August 12, 2022, the Debtors filed the *First Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 287].

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.



**PLEASE TAKE FURTHER NOTICE** that on October 5, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 496].

**PLEASE TAKE FURTHER NOTICE** that on October 17, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 539].

**PLEASE TAKE FURTHER NOTICE** that on October 19, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 564].

**PLEASE TAKE FURTHER NOTICE** that on October 20, 2022, the Debtors filed the *Second Amended Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 584].

**PLEASE TAKE FURTHER NOTICE** that on October 24, 2022, the Debtors filed the *Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 590].

**PLEASE TAKE FURTHER NOTICE** that on December 22, 2022, the Debtors filed the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 777].

**PLEASE TAKE FURTHER NOTICE** that on January 8, 2023, the Debtors filed the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 829].

**PLEASE TAKE FURTHER NOTICE** that on January 10, 2023, the Debtors filed the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 852].

**PLEASE TAKE FURTHER NOTICE** that on February 28, 2023, the Debtors filed the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1117].

**PLEASE TAKE FURTHER NOTICE** that on March 1, 2023, the Debtors filed the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1125] (the “Revised Plan”).

**PLEASE TAKE FURTHER NOTICE** that the Debtors hereby file the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, attached hereto as **Exhibit A** (the “Second Revised Plan”).

**PLEASE TAKE FURTHER NOTICE THAT** a comparison between the Revised Plan and the Second Amended Plan, is attached hereto as **Exhibit B**.

**PLEASE TAKE FURTHER NOTICE** that copies of the Initial Plan, the Second Revised Plan, and other pleadings filed in the above-captioned chapter 11 cases may be obtained free of charge by visiting the website of Stretto at <http://www.cases.stretto.com/Voyager>. You may also obtain copies of any pleadings by visiting the Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: March 5, 2023  
New York, New York

*/s/ Joshua A. Sussberg*

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*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Second Revised Plan**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC. <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
Debtors.	)	(Jointly Administered)

**THIRD AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND  
ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Joshua A. Sussberg, P.C.  
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**NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE,  
COMMITMENT, OR LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY  
OTHER PARTY IN INTEREST, AND THIS PLAN IS SUBJECT TO APPROVAL BY THE  
BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS. THIS PLAN IS NOT AN  
OFFER WITH RESPECT TO ANY SECURITIES.**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, LTD. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

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## **INTRODUCTION**

Voyager Digital Holdings, Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (each a “Debtor” and, collectively, the “Debtors”) propose this third amended joint plan (the “Plan”) for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings set forth in Article I.A of the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, properties and operations, projections, risk factors, a summary and analysis of this Plan, and certain related matters.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **ARTICLE I.**

### **DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES**

#### **A. Defined Terms**

Capitalized terms used in this Plan have the meanings ascribed to them below.

1. “3AC” means Three Arrows Capital, Ltd and any of its Affiliates or subsidiaries.
2. “3AC Claims” means the claims or causes of action asserted or assertable by the Debtors against 3AC, whether in the 3AC Liquidation Proceeding or otherwise.
3. “3AC Liquidation Proceeding” means that certain liquidation proceeding captioned *In the Matter of Three Arrows Capital Ltd. and in the Matter of Sections 159(1) and 162(1)(a) and (b) of the Insolvency Act 2003*, Claim No. BVIHC(COM)2022/0119 before the Eastern Caribbean Supreme Court in the High Court of Justice in the British Virgin Islands and the chapter 15 foreign recognition proceeding captioned *In re Three Arrows Capital, Ltd.*, No. 22-10920 (Bankr. S.D.N.Y. Jul. 1, 2022).
4. “3AC Loan” means that loan of 15,250 Bitcoins and 350 million USDC to 3AC pursuant to that certain master loan agreement dated March 4, 2022 by and between 3AC, as borrower, and OpCo and HTC Trading, Inc., as lenders.
5. “3AC Recovery” means the recovery, if any, of the Debtors from 3AC on account of the 3AC Claims.
6. “Account” means any account at OpCo held by an Account Holder relating to Cryptocurrency, which Account is identified in the Debtors’ books and records as holding Cryptocurrency as of the Petition Date.

7. “*Account Holder*” means any Person or Entity who holds an Account with OpCo as of the Petition Date.

8. “*Account Holder Claim*” means any Claim against the Debtors that is held by an Account Holder on account of such Holder’s Account.

9. “*Acquired Assets*” has the meaning ascribed to it in the Asset Purchase Agreement.

10. “*Acquired Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

11. “*Acquired Coins Value*” has the meaning ascribed to it in the Asset Purchase Agreement.

12. “*Additional Bankruptcy Distribution*” has the meaning ascribed to it in the Asset Purchase Agreement.

13. “*Administrative Claim*” means a Claim against a Debtor for the costs and expenses of administration of the Chapter 11 Cases arising on or after the Petition Date and prior to the Effective Date pursuant to section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors’ business and (b) Allowed Professional Fee Claims.

14. “*Administrative Claims Bar Date*” means the deadline for Filing requests for payment of Administrative Claims (other than requests for payment of Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), which: (a) with respect to Administrative Claims other than Professional Fee Claims, shall be thirty days after the Effective Date; and (b) with respect to Professional Fee Claims, shall be forty-five days after the Effective Date.

15. “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code. With respect to any Person that is not a Debtor, the term “*Affiliate*” shall apply to such Person as if the Person were a Debtor.

16. “*Alameda*” means Alameda Ventures Ltd., along with its Affiliates and subsidiaries.

17. “*Alameda Claims*” means the claims or causes of action asserted or assertable by the Debtors against Alameda, whether in the FTX Bankruptcy Proceeding or otherwise.

18. “*Alameda Loan Agreement*” means that certain unsecured loan agreement, dated as of June 21, 2022, as amended, restated, amended and restated, modified, or supplemented from time to time, by and among HoldCo, as the borrower, TopCo, as the guarantor, and Alameda, as the lender thereto.

19. “*Alameda Loan Facility*” means that certain unsecured loan facility provided for under the Alameda Loan Agreement.

20. “*Alameda Loan Facility Claims*” means any Claim against any Debtor derived from, based upon, or arising under the Alameda Loan Agreement and any fees, costs, and expenses that are reimbursable by any Debtor pursuant to the Alameda Loan Agreement.

21. “*Alameda Recovery*” means the recovery, if any, of the Debtors from Alameda on account of the Alameda Claims.

22. “*Allowed*” means, with respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim or Interest that is evidenced by a Proof of Claim timely Filed by the Bar Date or a request for payment of Administrative Claim timely Filed by the Administrative Claims Bar Date (or for which Claim or Interest under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court a Proof of Claim or a request for payment of Administrative Claim is not or shall not be required to be Filed); (b) a Claim or Interest that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; (c) a Claim or Interest Allowed pursuant to the Plan, any stipulation approved by the Bankruptcy Court, any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or a Final Order of the Bankruptcy Court, or (d) a Claim or Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court; *provided* that, with respect to a Claim or Interest described in clauses (a) and (b) above, such Claim or Interest shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or if such an objection is so interposed, such Claim or Interest shall have been Allowed by a Final Order. Any Claim or Interest that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes. A Proof of Claim Filed after and subject to the Bar Date or a request for payment of an Administrative Claim Filed after and subject to the Administrative Claims Bar Date, as applicable, shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. “Allow” and “Allowing” shall have correlative meanings.

23. “*Asset Purchase Agreement*” means that certain asset purchase agreement dated as of December 18, 2022 by and between BAM Trading Services Inc. (d/b/a Binance.US) as Purchaser and Voyager Digital, LLC as Seller.

24. “*Assumed Liabilities*” has the meaning ascribed to it in the Asset Purchase Agreement.

25. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as now in effect or hereafter amended.

26. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Southern District of New York, or any other court having jurisdiction over the Chapter 11 Cases, including to the extent of the withdrawal of reference under section 157 of the Judicial Code, the United States District Court for the Southern District of New York.

27. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated by the United States Supreme Court under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

28. “*Bar Date*” means the applicable deadline by which Proofs of Claim must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.

29. “*Bar Date Order*” means the *Order (I) Setting Deadlines for Submitting Proofs of Claims, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof* [Docket No. 218].

30. “*Binance.US Platform*” has the meaning ascribed to it in the Asset Purchase Agreement.
31. “*Binance US*” means BAM Trading Services Inc. (d/b/a Binance.US).
32. “*Binance US Account*” means a customer account opened with the Purchaser by an Account Holder or a Holder of an Allowed OpCo General Unsecured Claim.
33. “*Business Day*” means any day, other than a Saturday, Sunday, or a “legal holiday” (as defined in Bankruptcy Rule 9006(a)).
34. “*Cash*” or “\$” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.
35. “*Causes of Action*” mean any action, Claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, Lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law in accordance with applicable law. For the avoidance of doubt, “*Causes of Action*” includes: (a) any right of setoff, counterclaim, or recoupment and any claim arising from any contract or for breach of duties imposed by law or in equity; (b) any claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, violation of local, state, federal, or foreign law, or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any right to object to or otherwise contest Claims or Interests; (d) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (e) any claim or defense, including fraud, mistake, duress, usury, and any other defenses set forth in section 558 of the Bankruptcy Code.
36. “*CCO*” means Evan Psaropoulos.
37. “*CEO*” means Stephen Ehrlich.
38. “*Certificate*” means any instrument evidencing a Claim or an Interest.
39. “*Chapter 11 Cases*” means (a) when used with reference to a particular Debtor, the case pending for that Debtor in the Bankruptcy Court under chapter 11 of the Bankruptcy Code and (b) when used with reference to all Debtors, the procedurally consolidated cases filed for the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.
40. “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.
41. “*Claims Objection Bar Date*” means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) (i) with respect to Administrative Claims (other than Professional Fee Claims and Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), sixty days after the Administrative Claims Bar Date or (ii) with respect to all other Claims (other than Professional Fee Claims), 180 days after the Effective Date and (b) such other period of limitation as may be specifically fixed by the Debtors or the Wind-Down Debtor, as applicable, as approved by an order of the Bankruptcy Court for objecting to such Claims.

42. “*Claims Register*” means the official register of Claims against and Interests in the Debtors maintained by the Clerk of the Bankruptcy Court or the Claims, Noticing, and Solicitation Agent.

43. “*Claims, Noticing, and Solicitation Agent*” means Bankruptcy Management Solutions, Inc. d/b/a Stretto, in its capacity as the claims, noticing, and solicitation agent in the Chapter 11 Cases for the Debtors and any successors appointed by an order of the Bankruptcy Court.

44. “*Class*” means a class of Claims against or Interests in the Debtors as set forth in Article III of the Plan in accordance with section 1122(a) of the Bankruptcy Code.

45. “*Committee*” means the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases.

46. “*Confirmation*” means the Bankruptcy Court’s entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

47. “*Confirmation Date*” means the date on which Confirmation occurs.

48. “*Confirmation Hearing*” means the hearing before the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code at which the Debtors will seek Confirmation of the Plan.

49. “*Confirmation Order*” has the meaning ascribed to it in the Asset Purchase Agreement.

50. “*Consummation*” means the occurrence of the Effective Date.

51. “*Contributed Third-Party Claims*” means all direct Causes of Action that any Contributing Claimant has against any Person (other than a Debtor) that had a direct relationship with the Debtors, their predecessors, or respective affiliates and that harmed such Contributing Claimant in the claimant’s capacity as a creditor of Voyager, including (a) all Causes of Action based on, arising out of, or related to the marketing, sale, and issuance of Cryptocurrency that at any point was held or offered on Voyager’s platform; (b) all Causes of Action based on, arising out of, or related to the alleged misrepresentation of any of the Debtors’ financial information, business operations, or related internal controls; and (c) all Causes of Action based on, arising out of, or related to any alleged failure to disclose, or actual or attempted cover up or obfuscation of, any of the Debtors’ conduct prior to the Petition Date; *provided, however*, that Contributed Third-Party Claims do not include (i) any derivative claims of the Debtors; (ii) any direct claims against the Released Parties; (iii) any direct Causes of Action that any Contributing Claimant has against Mark Cuban, Dallas Basketball Limited d/b/a Dallas Mavericks, the National Basketball Association, and any of their Related Parties; or (iv) any direct Causes of Action that any Contributing Claimant, in its capacity as an equity holder of Voyager Digital Ltd., has that are asserted in the currently filed complaint, dated as of July 6, 2022, in the Ontario Superior Court of Justice by Francine De Sousa, against Voyager Digital Ltd., Stephen Ehrlich, Philip Eytan, Evan Psaropoulos, Lewis Bateman, Krisztian Toth, Jennifer Ackart, Glenn Stevens, and Brian Brooks.

52. “*Contributing Claimants*” means any Holders of Claims or Interests that elect on their ballots or opt-in forms to contribute their Contributed Third-Party Claims to the Wind-Down Debtor.

53. “*Cryptocurrency*” means a digital currency or crypto asset in which transactions are verified and records maintained by a decentralized system using cryptography, rather than by a centralized authority, including stablecoins, digital coins and tokens, such as security tokens, utility tokens and governance tokens.



54. “Cure” or “Cure Claim” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s default under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

55. “Customer Onboarding Protocol” means the protocol describing the process of onboarding Account Holders and Holders of OpCo General Unsecured Claims onto the Binance.US Platform, the form of which shall be included in the Plan Supplement and filed no later than by February 8, 2023, and which shall be in a form acceptable to the Purchaser.

56. “D&O Carriers” means the insurance carriers of the D&O Liability Insurance Policies.

57. “D&O Liability Insurance Policies” means all unexpired insurance policies maintained by the Debtors, the Wind-Down Debtor, or the Estates as of the Effective Date that have been issued (or provide coverage) regarding directors’, managers’, officers’, members’, and trustees’ liability (including any “tail policy”), including but not limited to the Management Liability Policy, the Excess Policies, and the Side-A Policy, and all agreements, documents, or instruments relating thereto.

58. “D&O Settlement” means the settlement between the Debtors and CEO and CCO as set forth in Article IV.G of the Plan.

59. “Debtors” means, collectively, each of the following: Voyager Digital Holdings, Inc.; Voyager Digital Ltd.; and Voyager Digital, LLC.

60. “Definitive Documents” means: (a) the Plan (and any and all exhibits, annexes, and schedules thereto); (b) the Confirmation Order; (c) the Disclosure Statement and the other Solicitation Materials; (d) the Disclosure Statement Order; (e) all pleadings filed by the Debtors in connection with the Chapter 11 Cases (or related orders); (f) the Plan Supplement; (g) the Asset Purchase Agreement; (h) the Customer Onboarding Protocol; and (i) any and all other deeds, agreements, filings, notifications, pleadings, orders, certificates, letters, instruments or other documents reasonably desired or necessary to consummate and document the transactions contemplated by the Restructuring Transactions (including any exhibits, amendments, modifications, or supplements made from time to time thereto).

61. “Disclosure Statement” means the *Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, as may be amended, supplemented, or otherwise modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan.

62. “Disclosure Statement Order” means the order entered by the Bankruptcy Court approving the Disclosure Statement.

63. “Disputed” means a Claim or an Interest or any portion thereof: (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order; and (c) with respect to which a party in interest has Filed a Proof of Claim, a Proof of Interest, or otherwise made a written request to a Debtor for payment.

64. “Disputed Claims Reserve” means an appropriate reserve in an amount to be determined by the Wind-Down Debtor for distributions on account of Disputed Claims that are subsequently Allowed after the Effective Date, in accordance with Article VII.D hereof.



65. “*Distributable Cryptocurrency*” means all Cryptocurrency held on the Voyager platform or that is otherwise property of any Debtor on the Effective Date after payment in full of, or reserve for, all Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims.

66. “*Distributable HoldCo Cash*” means HoldCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at HoldCo in full; and (y) to fund HoldCo’s Pro Rata share of the Wind-Down Budget.

67. “*Distributable OpCo Cash*” means OpCo’s Cash, including the Purchase Price Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at OpCo in full; and (y) to fund OpCo’s Pro Rata share of the Wind-Down Budget.

68. “*Distributable TopCo Cash*” means TopCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at TopCo in full; and (y) to fund TopCo’s Pro Rata share of the Wind-Down Budget.

69. “*Distribution Agent*” means, as applicable, the Purchaser, the Debtors, the Wind-Down Debtor or any Entity or Entities designated by the Purchaser, the Debtors, or the Wind-Down Debtor to make or to facilitate distributions that are to be made pursuant to the Plan, Definitive Documents, and Asset Purchase Agreement.

70. “*Distribution Date*” means, except as otherwise set forth herein, the date or dates determined by the Debtors or the Wind-Down Debtor, on or after the Effective Date, upon which the Distribution Agent shall make distributions to Holders of Allowed Claims or Allowed Interests entitled to receive distributions under the Plan.

71. “*Distribution Record Date*” means the record date for purposes of determining which Holders of Allowed Claims and Interests against the Debtors are eligible to receive distributions under the Plan, which date shall be the Effective Date, or such other date as is determined by the Debtors or designated by an order of the Bankruptcy Court.

72. “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which (a) all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan, (b) no stay of the Confirmation Order is in effect, and (c) the Debtors declare the Plan effective.

73. “*Employee Transition Plan*” has the meaning set forth in Article IV.E of the Plan, and which shall be in form and substance reasonably acceptable to the Committee.

74. “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

75. “*Estate*” means, as to each Debtor, the estate created on the Petition Date for the Debtor in its Chapter 11 Case pursuant to sections 301 and 541 of the Bankruptcy Code and all property (as defined in section 541 of the Bankruptcy Code) acquired by the Debtor after the Petition Date through and including the Effective Date.

76. “*Excess Policies*” means, collectively, the Excess Insurance Policy, No. EFI1203041-01, issued by Euclid Financial on behalf of Certain Underwriters of Lloyd’s, London, the Excess Insurance Policy, No. RILED0A3392022, issued by Relm Insurance Ltd., both for the February 22, 2022 to

February 22, 2023 period, and the Excess Policy, No. ELU184180-23, issued by XL Specialty Insurance Company, for the February 22, 2022 to July 1, 2023 period.

77. “*Exculpated Parties*” means, collectively, and in each case in its capacity as such: (a) each of the Debtors; (b) the Committee, and each of the members thereof, solely in their capacity as such; (c) each of the Released Professionals; (d) each of the Released Voyager Employees; and (e) the Distribution Agent.

78. “*Executory Contract*” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

79. “*Existing Equity Interests*” means any Interest in TopCo existing immediately prior to the occurrence of the Effective Date.

80. “*Extended Outside Date*” has the meaning set forth in the Asset Purchase Agreement.

81. “*Federal Judgment Rate*” means the federal judgment interest rate in effect as of the Petition Date calculated as set forth in section 1961 of the Judicial Code.

82. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing, respectively, in the Chapter 11 Cases with the Bankruptcy Court or its authorized designee, or, with respect to the filing of a Proof of Claim or Proof of Interest, file, filed, or filing, respectively, with the Claims, Noticing, and Solicitation Agent.

83. “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

84. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, petition for certiorari, or move for a new trial, reargument, reconsideration, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, reargument, reconsideration, or rehearing has been timely taken or filed, or as to which any appeal that has been or may be taken or any petition for certiorari or any motion for a new trial, reargument, reconsideration, or rehearing that has been or may be made or filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the motion for a new trial, reargument, reconsideration, or rehearing shall have been denied, resulted in no modification of such order (if any such motion has been or may be granted), or have otherwise been dismissed with prejudice; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure or any comparable Bankruptcy Rule may be filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

85. “*FTX*” means FTX Trading, Ltd. and any of its Affiliates or subsidiaries, including West Realm Shires Inc (d/b/a “FTX.US”).

86. “*FTX Bankruptcy Proceeding*” means that certain chapter 11 proceeding captioned *In re FTX Trading Ltd.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Nov. 11, 2022).

87. “*FTX Claims*” means the claims or causes of action asserted or assertable by the Debtors against FTX, whether in the FTX Bankruptcy Proceeding or otherwise.

88. “*FTX Recovery*” means the recovery, if any, of the Debtors from FTX on account of the FTX Claims.

89. “*FTX Settlement*” means the settlement between the Debtors, the Committee, FTX, Alameda, and the official committee of unsecured creditors in the FTX Bankruptcy Proceeding, pursuant to the terms set forth in the *Debtors’ Motion for Entry of an Order Approving the Joint Stipulation and Agreed Order Between the Voyager Debtors, the FTX Debtors, and Their Respective Official Committees of Unsecured Creditors* [Docket No. 1106].

90. “*General Unsecured Claim*” means, collectively, any HoldCo General Unsecured Claim, OpCo General Unsecured Claim, or TopCo General Unsecured Claim.

91. “*Governmental Claimant Stipulation*” means the *Joint Stipulation and Agreed Order Between the Debtors and Governmental Claimants* [Docket. No. 1100].

92. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

93. “*Government Bar Date*” means the applicable deadline by which Proofs of Claim by a Governmental Unit must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.

94. “*HoldCo*” means Voyager Digital Holdings, Inc.

95. “*HoldCo General Unsecured Claim*” means any Claim against HoldCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Alameda Loan Facility Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation, against HoldCo are HoldCo General Unsecured Claims.

96. “*Holder*” means an Entity holding a Claim against or an Interest in any Debtor.

97. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

98. “*Insurance Policies*” means any and all insurance policies entered into by the Debtors, including the D&O Insurance Policies.

99. “*Intercompany Claim*” means any Claim held by a Debtor or a Debtor’s Affiliate against a Debtor.

100. “*Intercompany Interest*” means, other than an Interest in Voyager, an Interest in one Debtor held by another Debtor or a Debtor’s Affiliate.

101. “*Interest*” means any equity security (as such term is defined in section 101(16) of the Bankruptcy Code) including all issued, unissued, authorized, or outstanding shares of capital stock and any other common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profit interests of an Entity, including all options, warrants, rights, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable, or exchangeable securities, or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in an Entity whether or not arising under or in connection with any employment agreement and whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security, and including any Claim against

the Debtors subject to subordination pursuant to section 510(b) of the Bankruptcy Code arising from or related to the foregoing.

102. “*Interim Compensation Order*” means the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* [Docket No. 236].

103. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001 and the rules and regulations promulgated thereunder, as applicable to the Chapter 11 Cases.

104. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

105. “*Liquidation Procedures*” means, in the event the Sale Transaction is not consummated by the Outside Date, such procedures filed by the Wind-Down Debtor identifying the mechanics and procedures to effectuate the Liquidation Transaction.

106. “*Liquidation Transaction*” means, in the event the Sale Transaction is not consummated by the Outside Date, the distribution of the Debtors’ Cryptocurrency, Cash and other assets pursuant to Article IV.D of this Plan.

107. “*Management Liability Policy*” means the Executive and Corporate Securities Liability Insurance Policy, No. ELU181214-22, issued by XL Specialty Insurance Company for the February 22, 2022 to February 22, 2023 period.

108. “*Money Transmitter License*” means any consent, license, certificate, franchise, permission, variance, clearance, registration, qualification, authorization, waiver, exemption or other permit issued, granted, given or otherwise made available by or under the authority of any Governmental Unit pursuant to state money transmission or similar laws.

109. “*Net Owed Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

110. “*Non-Released D&O Claims*” has the meaning set forth in Article IV.F of the Plan.

111. “*Non-Released D&O Claim Budget*” means the amount allocated to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims, which amount shall be agreed upon between the Debtors and the Committee prior to the Confirmation Hearing.

112. “*Non-Released Insurance Claims*” has the meaning set forth in Article IV.F of the Plan.

113. “*OpCo*” means Voyager Digital, LLC.

114. “*OpCo General Unsecured Claim*” means any Claim against OpCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Account Holder Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation against OpCo are OpCo General Unsecured Claims.

115. “*OSC*” means the Ontario Securities Commission.

116. “*Other Priority Claim*” means any Claim against a Debtor, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

117. “*Outside Date*” has the meaning set forth in the Asset Purchase Agreement. All references herein to the “*Outside Date*” shall be deemed to include the “*Extended Outside Date*” to the extent the Outside Date is extended in accordance with Section 8.1(c) of the Asset Purchase Agreement.

118. “*Person*” has the meaning set forth in section 101(41) of the Bankruptcy Code.

119. “*Petition Date*” means July 5, 2022.

120. “*Plan*” means this joint chapter 11 plan and all exhibits, supplements, appendices, and schedules hereto, as may be altered, amended, supplemented, or otherwise modified from time to time in accordance with Article X.A hereof, including the Plan Supplement (as altered, amended, supplemented, or otherwise modified from time to time), which is incorporated herein by reference and made part of the Plan as if set forth herein.

121. “*Plan Administrator*” means the Person or Persons selected by the Committee, after consultation with the Debtors, subject to the approval of the Bankruptcy Court and identified in the Plan Supplement, to serve as the administrator(s) of the Wind-Down Debtor, and any successor thereto, appointed pursuant to the Plan Administrator Agreement.

122. “*Plan Administrator Agreement*” means that certain agreement by and among the Debtors, the Committee, the Plan Administrator and the Wind-Down Debtor, which shall be included in the Plan Supplement in a form reasonably acceptable to the Committee.

123. “*Plan Supplement*” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may thereafter be amended, supplemented, or otherwise modified from time to time in accordance with the terms of the Plan, the Bankruptcy Code, the Bankruptcy Rules, and applicable law), to be Filed by the Debtors no later than seven days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court, and additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement. The Plan Supplement may include the following, as applicable: (a) the Schedule of Assumed Executory Contracts and Unexpired Leases; (b) the Schedule of Retained Causes of Action; (c) the Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases; (d) the Customer Onboarding Protocol; (e) the Restructuring Transactions Memorandum; (f) the Plan Administrator Agreement; (g) the Employee Transition Plan; and (h) any additional documents necessary to effectuate or that is contemplated by the Plan, including any compensation program for any of the Debtors’ employees to be established as contemplated in the Plan and the Definitive Documents to facilitate the transfer of Acquired Assets pursuant to the Asset Purchase Agreement and the wind-down of the Debtors’ Estates; *provided* that the Schedule of Retained Causes of Action shall be filed no later than 14 days before the Voting Deadline. The Plan Supplement (and the contents thereof) shall be (x) subject to Purchaser’s consent rights solely to the extent set forth under the Asset Purchase Agreement (and shall otherwise be consistent with the Asset Purchase Agreement) and (y) reasonably acceptable to the Committee.

124. “*Priority Tax Claim*” means any Claim of a Governmental Unit against a Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code.

125. “*Pro Rata*” means the proportion that (i) an Allowed Claim or an Allowed Interest in a particular Class bears to (ii) the aggregate amount of Allowed Claims or Allowed Interests in that Class



and, solely with respect to Claims in Classes 3 and 4(a), the proportion that an Allowed Claim in either such Class bears to the aggregate amount of Allowed Claims in Classes 3 and 4(a) in the aggregate, unless otherwise indicated. For purposes of calculating Pro Rata distributions if the Sale Transaction is consummated by the Outside Date, the Pro Rata shares of all Holders of Allowed Claims or Allowed Interests shall be calculated taking into account the Acquired Coins Value of the Net Owed Coins distributed to each of the Account Holders.

126. “*Professional*” means an Entity: (a) employed in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code or (b) for which compensation and reimbursement has been Allowed by Final Order of the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

127. “*Professional Fee Claim*” means any Administrative Claim by a Professional for compensation for services rendered or reimbursement of expenses incurred by such Professional through and including the Effective Date to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court. To the extent the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional’s requested fees and expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

128. “*Professional Fee Escrow Account*” means an escrow account funded by the Debtors with Cash no later than the Effective Date in an amount equal to the Professional Fee Escrow Amount.

129. “*Professional Fee Escrow Amount*” means the aggregate amount of quarterly U.S. Trustee fees, Professional Fee Claims, and other unpaid fees and expenses the Professionals have incurred or will incur in rendering services in connection with the Chapter 11 Cases prior to and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, which shall be estimated pursuant to the method set forth in Article II.B of the Plan.

130. “*Proof of Claim*” means a written proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

131. “*Proof of Interest*” means a written proof of Interest Filed against any of the Debtors in the Chapter 11 Cases.

132. “*Purchase Price Cash*” means the Cash paid by the Purchaser to OpCo pursuant to the Asset Purchase Agreement.

133. “*Purchaser*” means Binance US.

134. “*Reinstated*” or “*Reinstatement*” means, with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

135. “*Related Party*” means, with respect to any Entity, in each case in its capacity as such with respect to such Entity, such Entity’s current and former directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and advisors.

136. “*Released Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Committee, and each of the members thereof; (c) each of the Released Professionals; (d) Purchaser and each of its Related Parties; and (e) each of the Released Voyager Employees (subject to the limitations contained in Article IV.F and Article IV.G of the Plan); *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Released Parties” under the Plan.

137. “*Released Professionals*” means the following professionals retained by the Debtors, the Committee, or the Purchaser (as applicable): (i) Kirkland & Ellis LLP; (ii) Moelis & Company LLC; (iii) Berkeley Research Group, LLC; (iv) Bankruptcy Management Solutions, Inc. d/b/a Stretto; (v) Quinn Emanuel Urquhart & Sullivan LLP; (vi) Fasken Martineau DuMoulin LLP; (vii) Campbells Legal (BVI); (viii) McDermott Will & Emery LLP; (ix) FTI Consulting, Inc.; (x) Epiq Corporate Restructuring, LLC; (xi) Cassels, Brock & Blackwell LLP; (xii) Paul Hastings LLP; (xiii) Harney Westwood & Riegels LP (BVI); (xiv) Day Pitney LLP (solely in their capacity as counsel to the Debtors); (xv) Jenner & Block LLP; (xvi) Seyfarth Shaw LLP; (xvii) Alvarez & Marsal Canada Inc.; (xviii) Blake, Cassels & Graydon LLP; (xix) Jaffe Raitt Heuer & Weiss; (xx) Latham & Watkins LLP; (xxi) Lowenstein Sandler LLP; (xxii) Kramer Levin LLP; and (xxiii) Acura Law Firm; *provided* that if the Asset Purchase Agreement is terminated, Latham & Watkins LLP shall not be a “Released Professional” under the Plan.

138. “*Released Voyager Employees*” means all directors, officers, and Persons employed by each of the Debtors and their Affiliates serving in such capacity on or after the Petition Date but before the Effective Date (subject to the limitations contained in Article IV.F and Article IV.G of the Plan).

139. “*Releasing Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Committee, and each of the members thereof; (c) each of the Released Professionals; (d) each of the Released Voyager Employees; (e) Purchaser and each of its Related Parties to the extent Purchaser is able to bind such Related Parties; (f) all Holders of Claims that vote to accept the Plan and affirmatively opt into the releases provided by the Plan; (g) all Holders of Claims that vote to reject the Plan and affirmatively opt into the releases provided by the Plan; and (h) all Holders of Claims or Interests that abstain from voting (or are otherwise not entitled to vote) on the Plan and affirmatively opt into the releases provided by the Plan; *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Releasing Parties” under the Plan.

140. “*Restructuring Transactions*” means those mergers, amalgamations, consolidations, reorganizations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions, or other corporate transactions that the Debtors and the Committee jointly determine to be necessary to implement the transactions described in this Plan, as described in more detail in Article IV.B herein and the Restructuring Transactions Memorandum.

141. “*Restructuring Transactions Memorandum*” means that certain memorandum as may be amended, supplemented, or otherwise modified from time to time, describing the steps to be carried out to effectuate the Restructuring Transactions, the form of which shall be included in the Plan Supplement, and which shall be in a form reasonably acceptable to the Committee.

142. “*Robertson Class Action*” means that certain putative class action litigation filed in the United States District Court for the Southern District of Florida, captioned *Robertson, et al. v. Cuban, et al.*, No. 1:22-cv-22538-RKA (S.D. Fla. Aug. 10, 2022).

143. “*Sale Transaction*” means the sale of certain of the Debtors’ assets and all other transactions pursuant to the Asset Purchase Agreement.



144. “*Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance acceptable to the Purchaser and in all respects consistent with the terms of the Asset Purchase Agreement, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors and assigned to the Purchaser pursuant to the Plan and Asset Purchase Agreement, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Debtor, as applicable, in accordance with the Plan.

145. “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance reasonably acceptable to the Committee, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Debtor, as applicable, in accordance with the Plan.

146. “*Schedule of Retained Causes of Action*” means the schedule of certain Causes of Action of the Debtors that are not released, waived, settled, compromised, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors and/or the Wind-Down Debtor, which shall be included in the Plan Supplement. For the avoidance of doubt, any failure to specifically list any Causes of Action on the Schedule of Retained Causes of Action shall not be deemed a waiver or admission that any such Cause of Action does not constitute Vested Causes of Action.

147. “*Schedules*” means, collectively, the schedules of assets and liabilities, Schedule of Assumed Executory Contracts and Unexpired Leases, Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by each of the Debtors pursuant to section 521 of the Bankruptcy Code, as such schedules and statements may have been or may be amended, modified, or supplemented from time to time.

148. “*SEC*” means the United States Securities and Exchange Commission.

149. “*Section 510(b) Claim*” means any Claim against a Debtor subject to subordination under section 510(b) of the Bankruptcy Code.

150. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a secured Claim.

151. “*Secured Tax Claim*” means any Secured Claim against a Debtor that, absent its Secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

152. “*Securities Act*” means the U.S. Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

153. “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act.

154. “*Side-A Policy*” means the Cornerstone A-Side Management Liability Policy, ELU184179-22, issued by XL Specialty Insurance Company, for the July 1, 2022 to July 1, 2023 period.

155. “*Solicitation Materials*” means all solicitation materials with respect to the Plan.
156. “*Special Committee*” means the special committee established at OpCo, comprised of two independent directors, to conduct the Special Committee Investigation.
157. “*Special Committee Investigation*” means that certain investigation undertaken by the Special Committee into certain historical transactions, as more fully described in the Disclosure Statement.
158. “*Supported Jurisdiction*” has the meaning ascribed to it in the Asset Purchase Agreement.
159. “*TopCo*” means Voyager Digital Ltd., a Canadian corporation that is publicly traded on the Toronto Stock Exchange.
160. “*TopCo General Unsecured Claim*” means any Claim against TopCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Alameda Loan Facility Claim; (h) an Intercompany Claim; or (i) a Section 510(b) Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation, other than 510(b) Claims, against TopCo are TopCo General Unsecured Claims.
161. “*Transferred Creditors*” means Account Holders and Holders of Allowed OpCo General Unsecured Claims who have completed all documentation and “KYC” processes reasonably required by Purchaser in the ordinary course of Purchaser’s business with respect to similarly situated clients and who have opened a Binance US Account as of the date that is three (3) months following the later of the Closing Date (as defined in the Asset Purchase Agreement) or such later date as may be specified in the Customer Onboarding Protocol, and the successors and assigns of such Holders.
162. “*Transferred Cryptocurrency Value*” means the aggregate VWAP of any Cryptocurrency that is the subject of an Additional Bankruptcy Distribution as of the date that is two Business Days prior to such Additional Bankruptcy Distribution.
163. “*U.S. Trustee*” means the Office of the United States Trustee for Region 2.
164. “*Unclaimed Distribution*” means any distribution under the Plan on account of an Allowed Claim or Allowed Interest to a Holder that, after the expiration of six months after the Effective Date, has not: (a) accepted a distribution, (b) given notice to the Wind-Down Debtor of an intent to accept a particular distribution, (c) responded to the Debtors’ or Wind-Down Debtor’s requests for information necessary to facilitate a particular distribution, or (d) taken any other action necessary to facilitate such distribution.
165. “*Unexpired Lease*” means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or section 1123 of the Bankruptcy Code.
166. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.
167. “*Unsupported Jurisdiction*” has the meaning ascribed to it in the Asset Purchase Agreement.
168. “*Unsupported Jurisdiction Approval*” has the meaning ascribed to it in the Asset Purchase Agreement.

169. “*Vested Causes of Action*” means the Causes of Action vesting in the Wind-Down Debtor pursuant to Article IV.L of the Plan, including, but not limited to, those Causes of Action enumerated on the Schedule of Retained Causes of Action, which shall be included in the Plan Supplement and in all respects consistent with the terms of the Asset Purchase Agreement.

170. “*VGX*” means Voyager Token, that certain Cryptocurrency issued by the Debtors.

171. “*Voting Deadline*” means February 22, 2023.

172. “*Voyager*” means Voyager Digital Ltd. and its direct and indirect Affiliates.

173. “*VWAP*” means, with respect to any type of Cryptocurrency and as of any date of determination, an amount equal to the volume weighted average price in U.S. dollars for such type of Cryptocurrency for the consecutive 24-hour period immediately prior to 8:00 a.m. New York Time on such date of determination, as reported on <https://coinmarketcap.com>.

174. “*Wind-Down Debtor*” means a Debtor, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date, and as described in Article IV.H to, among other things, effectuate the wind-down of the Debtors and the Wind-Down Debtor, commence, litigate and settle the Vested Causes of Action that are not released, waived, settled, compromised, or transferred under the Plan and make distributions pursuant to the terms of the Plan and the Plan Administrator Agreement; *provided* that, for the avoidance of doubt, the Wind-Down Debtor shall not conduct any business operations or continue the Debtors’ business operations after the Effective Date.

175. “*Wind-Down Debtor Assets*” means any assets of the Debtors transferred to, and vesting in, the Wind-Down Debtor pursuant to the Plan Administrator Agreement, which, in the event the Sale Transaction is consummated, shall exclude the Acquired Assets, and which shall include, without limitation but only to the extent the following are not Acquired Assets, (a) the Wind-Down Reserve, (b) the Net-Owed Coins to be distributed to Account Holders in Supported Jurisdictions until such Account Holders complete the Purchaser’s onboarding requirements in accordance with the Asset Purchase Agreement, (c) the Net-Owed Coins to be distributed to Account Holders in Unsupported Jurisdictions to the extent the Purchaser has not obtained the applicable Unsupported Jurisdiction Approval in accordance with Section 6.12 of the Asset Purchase Agreement, (d) any distributions to Account Holders or Holders of OpCo General Unsecured Claims that are returned to the Wind-Down Debtor pursuant to Section 6.12(e) of the Asset Purchase Agreement, (e) 3AC Claims and 3AC Recovery, (f) FTX Claims and FTX Recovery, (g) Alameda Claims and Alameda Recovery, (h) the Non-Released D&O Claims, and (i) the Vested Causes of Action.

176. “*Wind-Down Debtor Beneficiaries*” means the Holders of Allowed Claims or Allowed Interests that are entitled to receive distributions pursuant to the terms of the Plan, whether or not such Claims or Interests are Allowed as of the Effective Date.

177. “*Wind-Down Debtor Expenses*” means all actual and necessary costs and expenses incurred by the Wind-Down Debtor or Plan Administrator in connection with carrying out the obligations of the Wind-Down Debtor pursuant to the terms of the Plan and the Plan Administrator Agreement.

178. “*Wind-Down Debtor Oversight Committee*” means the oversight committee tasked with overseeing the Wind-Down Debtor in accordance with the Plan and the Plan Administrator Agreement.

179. “*Wind-Down Budget*” means the budget to fund the Wind-Down Debtor, which will be included in the Plan Supplement.

180. “*Wind-Down Reserve*” means the amount set forth in the Wind-Down Budget to fund the Wind-Down Debtor.

## **B. Rules of Interpretation**

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; (2) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form; (3) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (4) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed, shall mean that document, schedule, or exhibit, as it may thereafter have been or may thereafter be validly amended, amended and restated, supplemented, or otherwise modified; (5) unless otherwise specified, any reference to an Entity as a Holder of a Claim or Interest, includes that Entity’s successors and assigns; (6) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (7) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (8) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (12) references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (13) unless otherwise specified, all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases; (14) any effectuating provisions may be interpreted by the Debtors or the Wind-Down Debtor in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; (15) any references herein to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter; (16) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; (17) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable state limited liability company laws; and (18) the use of “include” or “including” is without limitation unless otherwise stated.

## **C. Computation of Time**

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

## **D. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving

effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan and any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, documents, instruments, or contracts, in which case the governing law of such agreement shall control); *provided* that corporate, limited liability company, or partnership governance matters relating to the Debtors or the Wind-Down Debtor, as applicable, shall be governed by the laws of the jurisdiction of incorporation or formation of the relevant Debtor or Wind-Down Debtor, as applicable.

**E. Reference to Monetary Figures**

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

**F. Reference to the Debtors or the Wind-Down Debtor**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Wind-Down Debtor mean the Debtors and the Wind-Down Debtor, as applicable, to the extent the context requires.

**G. Nonconsolidated Plan**

Although for purposes of administrative convenience and efficiency the Plan has been filed as a joint plan for each of the Debtors and presents together Classes of Claims against and Interests in the Debtors, the Plan does not provide for the substantive consolidation of any of the Debtors.

**ARTICLE II.**

**ADMINISTRATIVE AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

**A. Administrative Claims**

Except as otherwise provided in this Article II.A and except with respect to Administrative Claims that are Professional Fee Claims or subject to 11 U.S.C. § 503(b)(1)(D), unless previously Filed, requests for payment of Allowed Administrative Claims (other than Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code) must be Filed and served on the Wind-Down Debtor pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such Administrative Claims shall be deemed satisfied as of the Effective Date without the need for any objection from the Wind-Down Debtor or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity. Objections to such requests, if any, must be Filed and served on the Wind-Down Debtor and the requesting party by the Claims Objection Bar Date for Administrative Claims. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order of the Bankruptcy Court.



Except with respect to Administrative Claims that are Professional Fee Claims, and except to the extent that an Administrative Claim or Priority Tax Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Claim and the applicable Debtor(s) agree to less favorable treatment, each Holder of an Allowed Administrative Claim shall receive an amount of Cash equal to the amount of the unpaid or unsatisfied portion of such Allowed Administrative Claim in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Effective Date, no later than thirty (30) days after the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Wind-Down Debtor, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court. Any Cryptocurrency inadvertently deposited to the Debtors' account(s) after the Petition Date shall be returned to the sender in full.

Objections to requests for payment of such Administrative Claims, if any, must be Filed with the Bankruptcy Court and served on the Wind-Down Debtor and the requesting Holder no later than the Claims Objection Bar Date for Administrative Claims. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, an order that becomes a Final Order of the Bankruptcy Court.

## **B. Professional Fee Claims**

### **1. Final Fee Applications and Payment of Professional Fee Claims**

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than sixty (60) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules. The Wind-Down Debtor shall pay Professional Fee Claims in Cash to such Professionals in the amount the Bankruptcy Court allows, including from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court; *provided* that the Debtors' and the Wind-Down Debtor's obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account.

### **2. Professional Fee Escrow Account**

No later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and the U.S. Trustee and for no other Entities until all quarterly U.S. Trustee fees and all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the U.S. Trustee or to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. No funds held in the Professional Fee Escrow Account shall be property of the Estates of the Debtors or the Wind-Down Debtor. When all

Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, and all U.S. Trustee quarterly fees plus statutory interest, if any, have been paid in full, any remaining funds held in the Professional Fee Escrow Account shall be turned over to the Wind-Down Debtor without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

3. Professional Fee Escrow Amount

The Professionals shall deliver to the Debtors a reasonable and good-faith estimate of their unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, and shall deliver such estimate no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Fee Claims Filed with the Bankruptcy Court, and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated to be outstanding as of the anticipated Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account; *provided* that the Wind-Down Debtor shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

4. Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors and/or the Wind-Down Debtor, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Wind-Down Debtor. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtor may employ and pay any Professional in the ordinary course of business for the period after the Confirmation Date without any further notice to or action, order, or approval of the Bankruptcy Court.

For the avoidance of doubt, no Administrative Claims, Professional Fee Claims, or any other post-confirmation fees and expenses shall be paid prior to payment of any quarterly fees due and outstanding to the U.S. Trustee.

**C. Priority Tax Claims**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release, and in exchange for, each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.



### ARTICLE III.

#### CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

##### A. Classification of Claims and Interests

Except for the Claims addressed in Article II of the Plan, all Claims against and Interests in the Debtors are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions pursuant to the Plan and in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

##### B. Summary of Classification

A summary of the classification of Claims against and Interests in each Debtor pursuant to the Plan is set forth in the following chart. The Plan constitutes a separate chapter 11 plan for each of the Debtors, and accordingly, the classification of Claims and Interests set forth below applies separately to each of the Debtors. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes, and such Claims or Interests shall be treated as set forth in Article III.E hereof. Voting tabulations for recording acceptances or rejections of the Plan will be conducted on a Debtor-by-Debtor basis as set forth above.<sup>1</sup>

Class	Claim or Interest	Status	Voting Rights
1	Secured Tax Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3	Account Holder Claims	Impaired	Entitled to Vote
4A	OpCo General Unsecured Claims	Impaired	Entitled to Vote
4B	HoldCo General Unsecured Claims	Impaired	Entitled to Vote
4C	TopCo General Unsecured Claims	Impaired	Entitled to Vote
5	Alameda Loan Facility Claims	Impaired	Not Entitled to Vote (Deemed to Reject)

<sup>1</sup> The Debtors reserve the right to separately classify Claims or Interests to the extent necessary to comply with any requirements under the Bankruptcy Code or applicable law.

Class	Claim or Interest	Status	Voting Rights
6	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
8	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
9	Existing Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

### C. Treatment of Classes of Claims and Interests

Subject to Article VI hereof, each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in exchange for such Holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors or Wind-Down Debtor, as applicable, and the Holder of such Allowed Claim or Allowed Interest, as applicable. In no event shall any Holder of a Claim receive more than such Holder's Allowed amount on account of such Claim.

#### 1. Class 1 — Secured Tax Claims

- (a) *Classification:* Class 1 consists of all Secured Tax Claims.
- (b) *Treatment:* Each Holder of an Allowed Secured Tax Claim shall receive, in full and final satisfaction of such Allowed Secured Tax Claim, at the option of the Wind-Down Debtor, payment in full in Cash of such Holder's Allowed Secured Tax Claim or such other treatment rendering such Holder's Allowed Secured Tax Claim Unimpaired.
- (c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Allowed Secured Tax Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Secured Tax Claims are not entitled to vote to accept or reject the Plan.

#### 2. Class 2 — Other Priority Claims

- (a) *Classification:* Class 2 consists of all Other Priority Claims.
- (b) *Treatment:* Each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction of such Allowed Other Priority Claim, at the option of the applicable Debtor, payment in full in Cash of such Holder's Allowed Other Priority Claim or such other treatment rendering such Holder's Allowed Other Priority Claim Unimpaired.
- (c) *Voting:* Class 2 is Unimpaired under the Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f)

of the Bankruptcy Code. Therefore, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 — Account Holder Claims

- (a) *Classification:* Class 3 consists of all Account Holder Claims.
- (b) *Allowance:* Account Holder Claims shall be conclusively Allowed in the amount listed on OpCos's *Amended Schedules of Assets and Liabilities* (Case No. 22-10945) [Docket No. 18]; *provided* that the rights of any Holder of an Account Holder Claim to object to the scheduled amount shall be preserved. To the extent an Account Holder Claim is Allowed in a greater amount than the scheduled amount of such Account Holder Claim, such Holder shall be entitled to a subsequent distribution such that it will receive its Pro Rata share of recoveries to Holders of Allowed Account Holder Claims. Account Holder Claims shall be valued in U.S. dollars as of the Petition Date consistent with section 502(b) of the Bankruptcy Code.
- (c) *Treatment:* Each Holder of an Allowed Account Holder Claim will receive in exchange for such Allowed Account Holder Claim:
  - (i) If the Sale Transaction is consummated by the Outside Date:
    - A. its Net Owed Coins, as provided in and subject to the requirements of Sections 6.10 and 6.12 of the Asset Purchase Agreement and Article VI.C.8 of the Plan; *provided* that (i) for Account Holders in Supported Jurisdictions who do not complete the Purchaser's onboarding requirements within three (3) months following the Closing Date, (ii) Account Holders in Unsupported Jurisdictions who make a written election, in accordance with a notice to be issued by the Debtors and within three (3) months following the later of the Closing Date or the date which the terms and conditions for the Binance.US Platform are made available to such Account Holders to accept, to receive value in Cash on account of the Net Owed Coins allocable to such Account Holders, and (iii) Account Holders in Unsupported Jurisdictions who do not make the election in the prior clause only to the extent that the Purchaser does not obtain the Unsupported Jurisdiction Approval for the jurisdiction in which such Account Holder resides within 6 months following the Closing Date (as defined in the Asset Purchase Agreement), such Account Holders shall receive, after expiration of such applicable time period (*i.e.*, (a) three (3) months following the Closing Date for the Account Holders described in subsection (i) of this paragraph, (b) three (3) months following the later of the Closing Date or the date which the terms and conditions for the Binance.US Platform are made available to such Account Holder to accept for the Account Holders described in subsection (ii) of this paragraph, and (c) six (6) months for the Account Holders described in subsection (iii) of this paragraph),

value in Cash at which such Net Owed Coins allocable to such Account Holder are liquidated;

- B. its Pro Rata share of any Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;
- C. its Pro Rata share of Distributable OpCo Cash; and
- D. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at OpCo;

*provided* that distributions made to any Account Holder pursuant to clauses (B), (C), and (D) above shall be made after taking into account the Acquired Coins Value of the Net Owed Coins or the value in Cash at which such Net Owed Coins are liquidated, as applicable, previously allocated to such Account Holder; or

- (ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:

- A. its Pro Rata share of Distributable OpCo Cash;
- B. its Pro Rata share of Distributable Cryptocurrency, which such Account Holder shall be able to withdraw in kind, alternative Cryptocurrency, and/or Cash for a period of thirty (30) days after the Effective Date through the Voyager platform or, if elected by Seller pursuant to Section 6.12(d) of the Asset Purchase Agreement, through the Binance.US Platform; *provided* that if the applicable transfer is made through the Voyager platform and such Account Holder does not withdraw its Pro Rata share of Distributable Cryptocurrency available to such Account Holder from the Voyager platform within such thirty (30) day period, such Account Holder will receive Cash in the equivalent value to its Pro Rata share of Distributable Cryptocurrency; and
- C. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed

Secured Tax Claims, and Allowed Other Priority Claims at OpCo.

- (d) *Voting:* Class 3 is Impaired under the Plan. Holders of Allowed Account Holder Claims are entitled to vote to accept or reject the Plan.

4. Class 4A — OpCo General Unsecured Claims

- (a) *Classification:* Class 4A consists of all OpCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed OpCo General Unsecured Claim will receive in exchange for such Allowed OpCo General Unsecured Claim:

- (i) If the Sale Transaction is consummated by the Outside Date:

- A. its Pro Rata share of Distributable Cryptocurrency in Cash;
- B. its Pro Rata share of Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;
- C. its Pro Rata share of Distributable OpCo Cash; and
- D. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at OpCo; or

- (ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:

- A. its Pro Rata share of Distributable Cryptocurrency in Cash;
- B. its Pro Rata share of Distributable OpCo Cash; and
- C. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at OpCo.

- (c) ***Voting:*** Class 4A is Impaired under the Plan. Holders of Allowed OpCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

5. Class 4B — HoldCo General Unsecured Claims

- (a) *Classification:* Class 4B consists of all HoldCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed HoldCo General Unsecured Claim will receive in exchange for such Allowed HoldCo General Unsecured Claim:
  - (i) its Pro Rata share of Distributable HoldCo Cash; and
  - (ii) to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to HoldCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to HoldCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at HoldCo.
- (c) *Voting:* Class 4B is Impaired under the Plan. Holders of Allowed HoldCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

6. Class 4C — TopCo General Unsecured Claims

- (a) *Classification:* Class 4C consists of all TopCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed TopCo General Unsecured Claim will receive in exchange for such Allowed TopCo General Unsecured Claim:
  - (i) its Pro Rata share of Distributable TopCo Cash; and
  - (ii) to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to TopCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable at TopCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at TopCo.
- (c) *Voting:* Class 4C is Impaired under the Plan. Holders of Allowed TopCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 5 — Alameda Loan Facility Claims

- (a) *Classification:* Class 5 consists of all Alameda Loan Facility Claims.
- (b) *Treatment:* If the FTX Settlement becomes effective, each Holder of an Allowed Alameda Loan Facility Claim shall, at the election of the Debtors with the consent of the Committee, in their sole discretion, following written notice to counsel to FTX, Alameda and to the official committee of unsecured creditors in the FTX Bankruptcy Proceeding of such election, which written notice shall be given no later than the date that is thirty (30) days after the Confirmation Hearing, (a)

withdraw its Alameda Loan Facility Claims in their entirety, with prejudice to FTX or any other party reasserting such claims, or (b) contribute the Alameda Loan Facility Claims to OpCo. If the FTX Settlement does not become effective, the Alameda Loan Facility Claims shall be subordinated to all Allowed Claims at OpCo, HoldCo, and TopCo, including, but not limited to, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, Allowed Account Holder Claims, Allowed OpCo General Unsecured Claims, Allowed HoldCo General Unsecured Claims, and Allowed TopCo General Unsecured Claims; *provided, however*, if the Bankruptcy Court denies subordination of the Alameda Loan Facility Claims, then such Alameda Loan Facility Claims shall be *pari passu* with General Unsecured Claims at the applicable Debtor entity.

- (c) *Voting:* Class 5 is Impaired under the Plan. Holders of Allowed Alameda Loan Facility Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Allowed Alameda Loan Facility Claims are not entitled to vote to accept or reject the Plan.

8. Class 6 — Section 510(b) Claims

- (a) *Classification:* Class 6 consists of all Section 510(b) Claims against TopCo.
- (b) *Allowance:* Notwithstanding anything to the contrary herein, a Section 510(b) Claim against TopCo, if any such Section 510(b) Claim exists, may only become Allowed by Final Order of the Bankruptcy Court.
- (c) *Treatment:* Each Holder of Allowed Section 510(b) Claims against TopCo will receive, to effectuate distributions, if applicable, from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to TopCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to TopCo shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims at TopCo.
- (d) *Voting:* Class 6 is Impaired under the Plan. Holders (if any) of Allowed Section 510(b) Claims against TopCo are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders (if any) of Allowed Section 510(b) Claims against TopCo are not entitled to vote to accept or reject the Plan.

9. Class 7 — Intercompany Claims

- (a) *Classification:* Class 7 consists of all Intercompany Claims.
- (b) *Treatment:* Each Intercompany Claim shall receive the treatment for such Intercompany Claim as determined by the Bankruptcy Court.
- (c) *Voting:* Holders of Intercompany Claims are either Unimpaired or Impaired, and such Holders of Intercompany Claims are conclusively presumed to have accepted



the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

10. Class 8 — Intercompany Interests

- (a) *Classification:* Class 8 consists of all Intercompany Interests.
- (b) *Treatment:* On the Effective Date, all Intercompany Interests shall be, at the option of the Debtors, either (a) Reinstated in accordance with Article III.G of the Plan or (b) set off, settled, addressed, distributed, contributed, merged, or cancelled, in each case in accordance with the Restructuring Transactions Memorandum.
- (c) *Voting:* Holders of Intercompany Interests are either Unimpaired or Impaired, and such Holders of Intercompany Interests are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

11. Class 9 — Existing Equity Interests

- (a) *Classification:* Class 9 consists of all Existing Equity Interests.
- (b) *Treatment:* Each Holder of Existing Equity Interests will receive, to effectuate distributions, if applicable, from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to TopCo; *provided* that any distributions on account of Wind-Down Debtor Assets attributable at TopCo shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims at TopCo.
- (c) *Voting:* Class 9 is Impaired under the Plan. Holders of Existing Equity Interests are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan.

**D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Wind-Down Debtor's rights in respect of any Unimpaired Claim, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

**E. Elimination of Vacant Classes; Presumed Acceptance by Non-Voting Classes**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**F. Subordinated Claims**

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims against and Allowed Interests in the Debtors and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Wind-Down Debtor reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**G. Intercompany Interests**

To the extent Reinstated under the Plan, distributions (if any) on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience and due to the importance of maintaining the corporate structure given the existing intercompany systems connecting the Debtors and their Affiliates, and in exchange for the Debtors' and Wind-Down Debtor's agreement under the Plan to make certain distributions to the Holders of Allowed Claims.

**H. Controversy Concerning Impairment**

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code is satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims or Interests. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

**ARTICLE IV.**

**PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

**A. General Settlement of Claims and Interests**

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under

section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as well as a finding by the Bankruptcy Court that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

## **B. Restructuring Transactions**

On or before the Effective Date, the applicable Debtors will take any action as may be necessary or advisable to effectuate the Restructuring Transactions described in the Plan, the Restructuring Transactions Memorandum, and the Customer Onboarding Protocol, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (4) the transfer or distribution of any Cryptocurrency or Cash pursuant to the Asset Purchase Agreement, or the Liquidation Procedures, as applicable; (5) the execution and delivery of the Plan Administrator Agreement; (6) any transactions necessary or appropriate to form or convert into the Wind-Down Debtor; (7) such other transactions that are required to effectuate the Restructuring Transactions, including any sales, mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (8) all transactions necessary to provide for the purchase of the Acquired Assets by Purchaser under the Asset Purchase Agreement; and (9) all other actions that the applicable Entities determine to be necessary or appropriate, or that are reasonably requested by the Purchaser in accordance with the Asset Purchase Agreement, including making filings or recordings that may be required by applicable law.

The Confirmation Order shall, and shall be deemed to, pursuant to sections 1123 and 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Restructuring Transactions.

## **C. The Sale Transaction**

If the Sale Transaction is consummated by the Outside Date, pursuant to the terms of the Asset Purchase Agreement, then the following terms shall govern:

On or prior to the Effective Date, the Debtors shall have consummated the Sale Transaction, and, among other things, the Acquired Assets and Assumed Liabilities shall have transferred to the Purchaser free and clear of all Liens, Claims, Interests, charges, or other encumbrances, and the Purchaser shall pay to the Debtors or Holders of Account Holder Claims and Holders of OpCo General Unsecured Claims, as applicable, the proceeds from the Sale Transaction, as and to the extent provided for in the Asset Purchase Agreement, and this Plan. The Confirmation Order shall authorize the Debtors, the Purchaser, and the Wind-Down Debtor, as applicable, to undertake the transactions contemplated by the Asset Purchase Agreement, including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code.

The Debtors and Purchaser shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Sale Transaction pursuant to the terms of the Asset Purchase Agreement the Customer Onboarding Protocol, and this Plan. The Debtors shall be authorized to sell any Cryptocurrency

to satisfy all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims. On and after the Effective Date, except as otherwise provided in the Plan and the Plan Administrator Agreement, the Wind-Down Debtor, or the Purchaser, as applicable, may operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

Notwithstanding anything to the contrary in the Asset Purchase Agreement, this Plan, or any Definitive Document, the Debtors, each Account Holder or Holder of an Allowed OpCo General Unsecured Claim, as applicable, shall retain all right, title, and interest in and to any Cryptocurrency allocated to such Account Holder or Holder of an Allowed OpCo General Unsecured Claim pursuant to this Plan through and including such time as such Cryptocurrency is returned or distributed to the Debtors or such Account Holder or Holder of an Allowed OpCo General Unsecured Claim, as applicable, hereunder, and such Cryptocurrency shall be held by Purchaser solely in a custodial capacity in trust and solely for the benefit of the Debtors or Account Holder or Holder of an Allowed OpCo General Unsecured Claim, as applicable, thereafter.

Notwithstanding anything contained in this Plan and any Definitive Documents, if the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated, all provisions contained in this Plan and the Definitive Documents governing the Sale Transaction shall have no further force and effect, and the provisions governing the Liquidation Transaction shall govern. The rights and remedies of the Seller and Purchaser under the Asset Purchase Agreement and any related orders of the Bankruptcy Court shall be expressly preserved.

#### **D. The Liquidation Transaction**

If the Sale Transaction is not consummated by the Outside Date, pursuant to the Asset Purchase Agreement, then the following terms shall govern:

##### *1. The Liquidation Transaction*

On or after the Outside Date, the Debtors will pursue the Liquidation Transaction in accordance with the Liquidation Procedures. Pursuant to the Liquidation Transaction, the Debtors, the Wind-Down Debtor, or the Plan Administrator, as applicable, will distribute certain of the Cryptocurrency in-kind to Holders of Account Holder Claims in accordance with Article III.C of the Plan, transfer all Wind-Down Debtor Assets to the Wind-Down Debtor, liquidate certain of the Cryptocurrency, distribute Cash to Holders of Claims, wind down and dissolve the Debtors, and pursue final administration of the Debtors' Estates pursuant to the Bankruptcy Code.

The Debtors, or the Wind-Down Debtor, as applicable, shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Liquidation Transaction pursuant to this Plan. On or before the date that is twenty-one days prior to the anticipated commencement of the Liquidation Transaction, the Debtors, or the Wind-Down Debtor, as applicable, shall file the Liquidation Procedures with the Bankruptcy Court. Parties in interest shall have ten days to object to the Liquidation Procedures, and if no objections are timely filed, the Liquidation Procedures shall be approved. In the event of a timely objection, the Bankruptcy Court shall adjudicate any objection to the Liquidation Procedures.

On and after the Effective Date, except as otherwise provided in the Plan, the Plan Administrator Agreement, and the Liquidation Procedures, the Debtors or the Wind-Down Debtor, as applicable, may

operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

## 2. *Cryptocurrency Rebalancing*

Prior to the Effective Date the Debtors shall, in consultation with the Committee, be authorized to rebalance their Cryptocurrency portfolio to ensure that the Debtors can effectuate *pro rata* in-kind distributions of the Distributable Cryptocurrency according to Article III.C.3(c) of this Plan, *provided* that such rebalancing shall be in accordance with the Asset Purchase Agreement (if the Asset Purchase Agreement has not been terminated). The Debtors may effectuate such rebalancing by (i) selling such Cryptocurrency that cannot be distributed to Account Holders, (ii) purchasing Cryptocurrency supported by Voyager's or Binance.US Platform (as provided by the Asset Purchase Agreement) that shall be distributed to Account Holders, and (iii) engaging in any other transaction, including the execution of trades of Cryptocurrency, necessary or appropriate to effectuate distributions of the Distributable Cryptocurrency to Holders of Allowed Account Holder Claims.

## E. **Employee Transition Plan**

The Debtors shall be authorized to implement the Employee Transition Plan, the terms of which shall be reasonably acceptable to Purchaser and the Committee and included in the Plan Supplement. The Employee Transition Plan shall help ensure that employees are available to provide transition services to the Debtors and/or the Wind-Down Debtor to effectuate the Sale Transaction and to wind down the Debtors' Estates.

## F. **Non-Released D&O Claims**

Any Claims or Causes of Action held by the Debtors or their respective estates against the Debtors' CEO and/or CCO (regardless of any fiduciary capacity in which such individuals were acting) that are expressly related to approval of the 3AC Loan are not released pursuant to the Plan (collectively, the "Non-Released D&O Claims"), and shall be assigned and transferred to the Wind-Down Debtor to be pursued, settled, or resolved by the Wind-Down Debtor in accordance with the terms of Article IV.G of this Plan and subject to the Wind-Down Budget. Any claims against the D&O Carriers that the Debtors' insurance transactions within the 90 days prior to the Petition Date are avoidable under the Bankruptcy Code, applicable state law, or both (the "Non-Released Insurance Claims") shall be assigned and transferred to the Wind-Down Debtor to be pursued, settled, or resolved solely by the Wind-Down Debtor in accordance with the terms of Article IV.G of this Plan. The Wind-Down Debtor shall be a successor to the Debtors' rights, title, and interest in any Non-Released D&O Claims and Non-Released Insurance Claims, and the Wind-Down Debtor shall have standing to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims in accordance with the terms of Article IV.G of this Plan; *provided* that: (i) any recovery by the Wind-Down Debtor (and the beneficiaries thereof) on account of any Non-Released D&O Claim, including in each case by way of settlement or judgment, shall be satisfied solely by and to the extent of the proceeds of the Debtors' available D&O Liability Insurance Policies (and/or from the D&O Carriers directly) after payment from such D&O Liability Insurance Policies of any and all covered costs and expenses incurred in connection with the defense of the Non-Released D&O Claims; (ii) any party, including any trustee or any beneficiary of the Wind-Down Debtor, seeking to execute, garnish, or otherwise attempt to collect on any settlement of or judgment in the Non-Released D&O Claims shall do so solely upon available insurance coverage from the Debtors' available D&O Liability Insurance Policies; and (iii) no party shall (a) record any judgment against the CEO or CCO, or (b) otherwise attempt to collect,



directly or indirectly, from the personal assets of the CEO or CCO with respect to the Non-Released D&O Claims. For the avoidance of doubt, this provision does not enjoin, limit, or impair direct claims held by third parties against the Debtors' CEO or CCO (if any) other than any direct claims held by Holders of Claims or Interests that opt into the third-party release in Article VIII.B of this Plan. Only upon the occurrence of the earlier of (x) a release being given as part of any later settlement of the Non-Released D&O Claims; (y) final resolution of any coverage claims asserted against the Debtors' available D&O Liability Insurance Policies on account of the Non-Released D&O Claims; or (z) exhaustion of the available insurance coverage under the D&O Liability Insurance Policies, the Non-Released D&O Claims shall be released and discharged without the need for further action or Bankruptcy Court order. For the avoidance of doubt, any release of the Non-Released D&O Claims shall not become effective until one of the three conditions stated in the preceding sentence above has been met.

#### **G. The D&O Settlement**

On the Effective Date, the terms of the D&O Settlement shall be effectuated as provided in this Article IV.G.

Pursuant to the D&O Settlement, CEO shall repay the \$1,900,000 received from the Debtors on or around February 28, 2022, by paying the after-tax amount of such transfer (approximately \$1,125,000) to OpCo in cash and assigning the right, if any, to any tax refund for the balance to the Wind-Down Debtor. CEO shall subordinate any Claims (including any indemnification claims asserted under this Art. IV.F) he holds against the Debtors until all other Holders of Claims are paid in full. CCO shall subordinate 50 percent of any Claims he holds other than indemnification claims (and 100% of any indemnification claims asserted under this Art. IV.F) against the Debtors until all other Holders of Claims are paid in full; *provided, however*, that in the event the D&O Carriers deny coverage to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.

CEO and CCO, each as insureds, under the D&O Liability Insurance Policies agree: (i) not to draw down on the Side-A Policy; *provided, however*, that should coverage continue to be available under the Side-A Policy following resolution of the Debtors' and/or the Wind-Down Debtor's claims for the avoidance of the premium paid for the policy (whether by judgment or settlement or otherwise) such officer shall be entitled to seek coverage under the Side-A Policy to the extent any such coverage remains; and (ii) not to object to any settlement by the Debtors or Wind Down Entity of avoidance claims under the Side-A Policy, even if such settlement results in termination of benefits under the Side-A Policy. For the avoidance of doubt, this agreement is not intended to and shall not alter or amend each of the insureds' duties under the D&O Liability Insurance Policies. In the event that any insurer under the D&O Liability Insurance Policies denies coverage for any reason, the Wind-Down Debtor shall have the right to bring a coverage claim against the insurer(s) in the name of the insured, the insureds shall reasonably cooperate with respect to any such claim, and the insured may participate at their election (and at their sole cost). For the avoidance of doubt, nothing contained in this Plan is intended as a waiver or release of the Debtors' and/or Wind-Down Debtor's right to assert any Non-Released D&O Claim, but rather limits such recovery in the manner set forth above.

CEO and CCO shall be entitled to receive their salary and benefits for as long as they work for the Debtors and/or the Wind-Down Debtor and retain the right to assert claims for advancement and indemnification up to the limits of any available coverage in the event any of the insurers that issued the Management Liability Policy, the Excess Policy, or the Side-A Policy denies coverage to CEO and/or CCO based upon or arising out of the lack of a formal claim for indemnification; *provided, however*, that any such indemnification or advancement claims shall be subordinated in full unless and until all other Holders of Claims are paid in full; *provided, further*, that in the event that any of the D&O Carriers deny coverage

to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.

CEO and CCO shall subordinate any and all rights and entitlements under the Cornerstone A-Side Management Liability Insurance Policy to Voyager Digital Ltd., Policy Number ELU184179-22, to any recovery by the Debtors and/or the Wind-Down Debtor on account of the Debtors' and/or Wind-Down Debtor's claims for the avoidance of the premium paid for the policy. For the avoidance of doubt, should coverage continue to be available under the Side-A Policy following resolution of the Debtors' and/or the Wind-Down Debtor's claims for the avoidance of the premium paid for the policy (whether by judgment or settlement or otherwise), CEO and/or CCO shall be entitled to seek coverage under the Side-A Policy. CEO and CCO shall remain at, and continue performing the responsibilities of, their respective position(s) with the Debtors and assist with the Debtors' transition for at least 30 days from entry of the Confirmation Order; *provided* that CCO shall have no obligation to remain at his position with the Debtors beyond January 15, 2023 and the CEO shall have the right to pursue and engage in any employment opportunity, business venture, consulting arrangement, or investment that may become available; *provided, further*, that both the CEO and CCO shall be available to the Debtors and/or the Wind-Down Debtor for a maximum of five hours per month for the one year following the Effective Date.

In the event that the sworn financial disclosure statements under penalty of perjury provided to the Debtors, the Special Committee and the Committee by CEO and CCO are later determined at any time by Final Order of the Bankruptcy Court or other court of competent jurisdiction to be materially inaccurate, (a) the limitations on recovery by the Wind-Down Debtor under this Article IV.G shall no longer apply, (b) any and all release, exculpation and injunction provisions in Article VIII of this Plan with respect to CEO and/or CCO (as applicable) shall be deemed null and void, (c) all Releasing Parties' rights with respect to the CEO and/or CCO (as applicable) shall be fully intact and preserved, (d) amounts paid by CEO shall not be repaid by the Wind-Down Debtor, and (e) any applicable statute of limitations shall be deemed tolled from the Petition Date to the date of entry of the order referenced above. The Wind-Down Debtor, as successor to the Debtors, shall have standing to bring a motion seeking relief pursuant to this Article IV.G.

Entry of the Confirmation Order shall be deemed approval of the D&O Settlement and, to the extent not already approved by the Bankruptcy Court, the Debtors or the Wind-Down Debtor, as applicable, are authorized to negotiate, execute, and deliver those documents necessary or appropriate to effectuate the D&O Settlement, without further notice or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors, the Wind-Down Debtor, the Committee, and the Special Committee may deem to be necessary to effectuate the D&O Settlement.

## **H. The Wind-Down Debtor**

On the Effective Date, the Wind-Down Debtor shall be formed or converted into for the benefit of the Wind-Down Debtor Beneficiaries and each of the Debtors shall transfer the Wind-Down Debtor Assets for distribution in accordance with the terms of the Plan. The Confirmation Order shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan.

### **1. Establishment of a Wind-Down Debtor**

Pursuant to the Plan Administrator Agreement, the Wind-Down Debtor will be established, formed, merged, or converted. The Wind-Down Debtor shall be the successor-in-interest to the Debtors, and the



Wind-Down Debtor shall be a successor to the Debtors' rights, title, and interest to the Wind-Down Debtor Assets. The Wind-Down Debtor will conduct no business operations and will be charged with winding down the Debtors' Estates. The Wind-Down Debtor shall be managed by the Plan Administrator and shall be subject to the Wind-Down Debtor Oversight Committee. The Wind-Down Debtor shall be administered in accordance with the terms of the Plan Administrator Agreement and shall be subject to the Wind-Down Budget and the Non-Released D&O Claim Budget. For the avoidance of doubt, the Wind-Down Debtor shall not have any right or interest in any Cause of Action or Claim constituting an Acquired Asset. The Wind-Down Debtor shall be administered in a manner consistent with the SEC's published guidance on liquidating trusts.

Prior to the Effective Date, any and all of the Debtors' assets shall remain assets of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and on the Effective Date the Wind-Down Debtor Assets shall, subject to the Plan Administrator Agreement, be transferred to and vest in the Wind-Down Debtor. For the avoidance of doubt, to the extent not otherwise waived in writing, released, settled, compromised, assigned or sold pursuant to a prior order or the Plan, the Wind-Down Debtor specifically retains and reserves the right to assert, after the Effective Date, any and all of the Vested Causes of Action and related rights, whether or not asserted as of the Effective Date, and all proceeds of the foregoing, subject to the terms of the Plan, including without limitation Article IV.F and Article IV.G.

Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, only the Wind-Down Debtor and the Plan Administrator shall have the right to pursue or not to pursue, or, subject to the terms hereof and the Plan Administrator Agreement, compromise or settle any Wind-Down Debtor Assets transferred to the Wind-Down Debtor. On and after the Effective Date, the Wind-Down Debtor and the Plan Administrator may, without further Bankruptcy Court approval, commence, litigate, and settle any Vested Causes of Action or Claims relating to any Wind-Down Debtor Assets transferred to the Wind-Down Debtor or rights to payment or Claims that belong to the Debtors as of the Effective Date or are instituted by the Wind-Down Debtor and the Plan Administrator on or after the Effective Date, except as otherwise expressly provided herein and in the Plan Administrator Agreement. All of the Wind-Down Debtor's activities shall be subject to the Wind-Down Budget and the Non-Released D&O Claim Budget. The Wind-Down Debtor shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code.

The Wind-Down Debtor shall be deemed hereby substituted as plaintiff, defendant, or in any other capacity for the Debtors and the Committee, as applicable, in any Causes of Action pending before the Bankruptcy Court or any other court that relates to a Wind-Down Debtor Asset without the need for filing any motion for such relief. On the Effective Date, the Debtors and the Plan Administrator shall execute the Plan Administrator Agreement and shall have established the Wind-Down Debtor pursuant hereto. In the event of any conflict between the terms of this Article IV.H and the terms of the Plan Administrator Agreement, the terms of the Plan Administrator Agreement shall control.

## 2. Wind-Down Debtor Assets

Notwithstanding any prohibition on assignability under applicable non-bankruptcy law, on the Effective Date and thereafter if additional Wind-Down Debtor Assets become available, the Debtors shall be deemed, subject to the Plan Administrator Agreement, to have automatically transferred to the applicable Wind-Down Debtor all of their right, title, and interest in and to all of the Wind-Down Debtor Assets, in accordance with section 1141 of the Bankruptcy Code. All such assets shall automatically vest in the Wind-Down Debtor free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims and Interests as set forth herein and the expenses of the Wind-Down Debtor as set forth herein and in the Plan Administrator Agreement. Thereupon, the Debtors shall have no interest in or with respect to the Wind-Down Debtor Assets or the Wind-Down Debtor.

3. Treatment of Wind-Down Debtor for Federal Income Tax Purposes; No Successor-in-Interest

The Wind-Down Debtor shall be established for the primary purpose of liquidating and distributing the Wind-Down Debtor Assets transferred to it, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Wind-Down Debtor. Accordingly, the Plan Administrator may, in an expeditious but orderly manner, liquidate the Wind-Down Debtor Assets, make timely distributions to the Wind-Down Debtor Beneficiaries and not unduly prolong its duration. The Wind-Down Debtor shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Wind-Down Debtor Agreement. The record holders of beneficial interests shall be recorded and set forth in a register maintained by the Wind-Down Debtor expressly for such purpose.

The Wind-Down Debtor is intended to qualify as a “grantor trust” for federal income tax purposes to the extent reasonably practicable, with the Wind-Down Debtor Beneficiaries treated as grantors and owners of the Wind-Down Debtor. However, with respect to any of the assets of the Wind-Down Debtor that are subject to potential disputed claims of ownership or uncertain distributions, *or* to the extent “liquidating trust” treatment is otherwise unavailable, the Debtors anticipate that such assets will be subject to disputed ownership fund treatment under Section 1.468B-9 of the Treasury Regulations, that any appropriate elections with respect thereto shall be made, and that such treatment will also be applied to the extent possible for state and local tax purposes. Under such treatment, a separate federal income tax return shall be filed with the IRS for any such account. Any taxes (including with respect to interest, if any, earned in the account) imposed on such account shall be paid out of the assets of the respective account (and reductions shall be made to amounts disbursed from the account to account for the need to pay such taxes).

4. Appointment of Plan Administrator

The Plan Administrator shall be selected by the Committee, in consultation with the Debtors, and shall be identified in the Plan Supplement. The appointment of the Plan Administrator shall be approved in the Confirmation Order, and the Plan Administrator’s duties shall commence as of the Effective Date. The Plan Administrator shall administer the distributions to the Wind-Down Debtor Beneficiaries and shall serve as a representative of the Estates under section 1123(b) of the Bankruptcy Code for the purpose of enforcing Vested Causes of Action belonging to the Estates that are not released, waived, settled, compromised, or transferred pursuant to the Plan and subject to the limitations set forth in the Plan, including Article IV.F and Article IV.G.

In accordance with the Plan Administrator Agreement, the Plan Administrator shall serve in such capacity through the earlier of (i) the date on which the Wind-Down Debtor is dissolved in accordance with the Plan Administrator Agreement, and (ii) the date on which a Plan Administrator resigns, is terminated, or is otherwise unable to serve; *provided, however*, that, in the event that a Plan Administrator resigns, is terminated, or is otherwise unable to serve, the Wind-Down Debtor Oversight Committee shall appoint a successor to serve as a Plan Administrator in accordance with the Plan Administrator Agreement. If the Wind-Down Debtor Oversight Committee does not appoint a successor within the time periods specified in the Plan Administrator Agreement, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Wind-Down Debtor, shall approve a successor to serve as a Plan Administrator.

5. Responsibilities of Plan Administrator

Responsibilities of the Plan Administrator shall be as identified in the Plan Administrator Agreement and shall include, but are not limited to:

- (a) implementing the Wind-Down Debtor, and making distributions contemplated by the Plan;
- (b) marshalling, marketing for sale, and winding down any of the Debtors' assets constituting Wind-Down Debtor Assets;
- (c) appointing an independent director at each Debtor to act as a fiduciary for such Debtor entity in connection with the resolution of the Intercompany Claims;
- (d) overseeing the accounts of the Debtors and the Wind-Down Debtor and the wind down and dissolution of the Debtors and the Wind-Down Debtor, including effectuating the transactions described in the Restructuring Transactions Memorandum;
- (e) receiving, maintaining, conserving, supervising, prosecuting, collecting, settling, managing, investing, protecting, and where appropriate, causing the Wind-Down Debtor to abandon the Wind-Down Debtor Assets, including causing the Wind-Down Debtor to invest any moneys held as Wind-Down Debtor Assets;
- (f) opening and maintaining bank accounts on behalf of or in the name of the Debtors or the Wind-Down Debtor, including, in the Plan Administrator's discretion, separating bank accounts for each of the Debtors;
- (g) entering into any agreement or executing any document or instrument required by or consistent with the Plan, the Confirmation Order, or the Plan Administrator Agreement, and to perform all obligations thereunder;
- (h) collecting and liquidating all Wind-Down Debtor Assets, including the sale of any Wind-Down Debtor Assets;
- (i) protecting and enforcing the rights to the Wind-Down Debtor Assets (including any Vested Causes of Action and Contributed Third-Party Claims) vested in the Wind-Down Debtor and Plan Administrator by the Plan Administrator Agreement by any method deemed appropriate, including, without limitation, by judicial proceedings or otherwise;
- (j) investigating any Wind-Down Debtor Assets, and any other potential Vested Causes of Action and Contributed Third-Party Claims;
- (k) reviewing, reconciling, compromising, settling, objecting, or prosecuting Claims or Interests of any kind;
- (l) seeking the examination of any Person pursuant to Federal Rule of Bankruptcy Procedure 2004;

- (m) retaining professionals, disbursing agents, and other agents, independent contractors, and third parties pursuant to the Plan Administrator Agreement and paying the reasonable compensation thereof;
- (n) paying all lawful expenses, debts, charges, taxes, and other liabilities, and making all other payments relating to the Wind-Down Debtor Assets, solely out of Wind-Down Debtor Assets;
- (o) prosecuting and settling the Vested Causes of Action, including, without limitation, the 3AC Claims, FTX Claims, Alameda Claims, Contributed Third-Party Claims, and any causes of action not included in the Asset Purchase Agreement or released under the Plan;
- (p) reviewing, reconciling, pursuing, commencing, prosecuting, compromising, settling, dismissing, releasing, waiving, withdrawing, abandoning, resolving, or electing not to pursue all Vested Causes of Action and Contributed Third-Party Claims;
- (q) acquiring litigation and other claims related to the Debtors, and prosecuting such claims;
- (r) reviewing and compelling turnover of the Debtors or the Wind-Down Debtor's property;
- (s) calculating and making all Distributions to the holders of Allowed Claims against each Debtor and, solely to the extent of payment in full of Allowed Claims, to holders of Allowed Interests, as provided for in, or contemplated by, the Plan and the Plan Administrator Agreement; *provided* that because the Plan does not substantively consolidate the Debtors' Estates, the Plan Administrator shall make Distributions from the Wind-Down Debtor Assets to the holders of Claims and Interests (if applicable) against that specific Debtor;
- (t) establishing, administering, adjusting, and maintaining the Wind-Down Reserve and the Disputed Claims Reserve;
- (u) withholding from the amount distributable to any Person the maximum amount needed to pay any tax or other charge that the Plan Administrator has determined, based upon the advice of his agents or professionals, may be required to be withheld from such Distribution under the income tax or other laws of the United States or of any state or political subdivision thereof;
- (v) in reliance upon the Debtors' Schedules, the official Claims Register maintained in the Chapter 11 Cases and the Debtors' filed lists of equity security holders, reviewing, and where appropriate, allowing or objecting to Claims and (if applicable) Interests, and supervising and administering the commencement, prosecution, settlement, compromise, withdrawal, or resolution of all objections to Disputed Claims and (if applicable) Disputed Interests required to be administered by the Wind-Down Debtor;
- (w) making all tax withholdings, filing tax information returns, filing and prosecuting tax refunds claims, making tax elections by and on behalf of the Debtors or the

Wind-Down Debtor, and filing tax returns for the Debtors or the Wind-Down Debtor pursuant to and in accordance with the Plan, and paying taxes, if any, payable for and on behalf of the Debtors or the Wind-Down Debtor, as applicable; *provided, however*, that notwithstanding any other provision of the Plan Administrator Agreement, the Plan Administrator shall not have any responsibility or personal liability in any capacity whatsoever for the signing or accuracy of the Debtors' income tax returns that are due to be filed after the Effective Date or for any tax liability related thereto;

- (x) abandoning or donating to a charitable organization qualifying under IRC section 501(c)(3) any Wind-Down Debtor Assets that the Plan Administrator determines to be too impractical to distribute or of inconsequential value;
- (y) seeking a determination of tax liability or refund under Bankruptcy Code section 505;
- (z) establishing reserves for taxes, assessments, and other expenses of administration of the Debtors or the Wind-Down Debtor as may be necessary and appropriate for the proper operation of matters incident to the Debtors or the Wind-Down Debtor;
- (aa) paying Wind-Down Debtor Expenses;
- (bb) if the Plan Administrator deems appropriate in the Plan Administrator's sole discretion, seeking to establish a bar date for filing proofs of Interest in any Debtor or otherwise to determine the holders and extent of Allowed Interests in any Debtor;
- (cc) purchasing and carrying all insurance policies that the Plan Administrator deems reasonably necessary or advisable and paying all associated insurance premiums and costs;
- (dd) undertaking all administrative functions remaining in the Chapter 11 Cases to the extent necessary to carry out the Debtors', the Wind-Down Debtor's, or the Plan Administrator's duties under the Plan, including reporting and making required payments of fees to the U.S. Trustee and overseeing the closing of the Chapter 11 Cases;
- (ee) retaining, terminating, appointing, hiring, or otherwise employees, personnel, management, and directors at any of the Debtors to the extent necessary to carry out the purposes of the Plan Administrator Agreement and the Plan, including, without limitation, to address any disputes between the Debtors;
- (ff) exercising, implementing, enforcing, and discharging all of the terms, conditions, powers, duties, and other provisions of the Plan, the Confirmation Order, and the Plan Administrator Agreement; and
- (gg) taking all other actions consistent with the provisions of the Plan and the Plan Administrator Agreement that the Plan Administrator deems reasonably necessary or desirable to administer the Debtors and the Wind-Down Debtor.

6. The Wind-Down Debtor Oversight Committee

The Wind-Down Debtor Oversight Committee shall consist of those parties selected by the Committee and identified in the Plan Supplement, and which, at no time shall consist of greater than seven members.

The Wind-Down Debtor Oversight Committee shall have the responsibility to review and advise the Plan Administrator with respect to the liquidation and distribution of the Wind-Down Debtor Assets transferred to the Wind-Down Debtor in accordance herewith and the Plan Administrator Agreement. For the avoidance of doubt, in advising the Plan Administrator, the Wind-Down Debtor Oversight Committee shall maintain the same fiduciary responsibilities as the Plan Administrator. Vacancies on the Wind-Down Debtor Oversight Committee shall be filled by a Person designated by the Plan Administrator, subject to the unanimous consent of the remaining member or members of the Wind-Down Debtor Oversight Committee. The Plan Administrator shall have the authority to seek an order from the Bankruptcy Court removing or replacing members of the Wind-Down Debtor Oversight Committee for cause.

7. Expenses of Wind-Down Debtor

The Wind-Down Debtor Expenses shall be paid from the Wind-Down Debtor Assets subject to the Wind-Down Budget and the Non-Released D&O Claim Budget.

8. Insurance; Bond

The Plan Administrator may obtain insurance coverage (in the form of an errors and omissions policy or otherwise) with respect to the liabilities and obligations of the Plan Administrator and the Wind-Down Debtor Oversight Committee under the Plan Administrator Agreement. Unless otherwise agreed to by the Wind-Down Debtor Oversight Committee, the Plan Administrator shall serve with a bond, the terms of which shall be agreed to by the Wind-Down Debtor Oversight Committee, and the cost and expense of which shall be paid by the Wind-Down Debtor.

9. Fiduciary Duties of the Plan Administrator

Pursuant hereto and the Plan Administrator Agreement, the Plan Administrator shall act in a fiduciary capacity on behalf of the interests of all Holders of Claims and Interests that will receive distributions pursuant to Plan.

10. Termination of the Wind-Down Debtor

The Wind-Down Debtor will terminate on the earlier of: (a) (i) the final liquidation, administration and distribution of the Wind-Down Debtor Assets in accordance with the terms of the Plan Administrator Agreement and the Plan, and its full performance of all other duties and functions as set forth herein or in the Plan Administrator Agreement and (ii) the Chapter 11 Cases of the Debtors have been closed; or (b) the Plan Administrator determines in its reasonable judgment that the Wind-Down Debtor lacks sufficient assets and financial resources, after reasonable collection efforts, to complete the duties and powers assigned to him or her under the Plan, the Confirmation Order and/or the Plan Administrator Agreement. After (x) the final distributions pursuant hereto, (y) the Filing by or on behalf of the Wind-Down Debtor of a certification of dissolution with the Bankruptcy Court, and (z) any other action deemed appropriate by the Plan Administrator, the Wind-Down Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions.



# 11. Liability of Plan Administrator; Indemnification

Neither the Plan Administrator, the Wind-Down Debtor Oversight Committee, their respective members, employees, employers, designees or professionals, or any of their duly designated agents or representatives (each, a “Wind-Down Debtor Party” and collectively, the “Wind-Down Debtor Parties”) shall be liable for losses, claims, damages, liabilities or expenses in connection with the affairs of the Wind-Down Debtor or for the act or omission of any other Wind-Down Debtor Party, nor shall the Wind-Down Debtor Parties be liable for any act or omission taken or omitted to be taken pursuant to the discretion, powers and authority conferred, or in good faith believed to be conferred by the Plan Administrator Agreement or the Plan other than for specific acts or omissions resulting from such Wind-Down Debtor Party’s willful misconduct, gross negligence or actual fraud. Subject to the Plan Administrator Agreement, the Plan Administrator shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee, and the Wind-Down Debtor Oversight Committee shall be entitled to enjoy all of the rights, powers, immunities and privileges of an official committee of unsecured creditors. The Plan Administrator or the Wind-Down Debtor Oversight Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Plan Administrator nor the Wind-Down Debtor Oversight Committee shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Plan Administrator, the Wind-Down Debtor Oversight Committee, or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or actual fraud. The Wind-Down Debtor shall indemnify and hold harmless the Wind-Down Debtor Parties (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys’ fees, disbursements, and related expenses) that such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Wind-Down Debtor or the Plan or the discharge of their duties hereunder; *provided, however*, that no such indemnification will be made to such Persons for actions or omissions as a result of willful misconduct, gross negligence, or actual fraud. Persons dealing or having any relationship with the Plan Administrator shall have recourse only to the Wind-Down Debtor Assets and shall look only to the Wind-Down Debtor Assets to satisfy any liability or other obligations incurred by the Wind-Down Debtor or the Wind-Down Debtor Oversight Committee to such Person in carrying out the terms of the Plan Administrator Agreement, and neither the Plan Administrator nor the Wind-Down Debtor Oversight Committee, shall have any personal obligation to satisfy any such liability. The Plan Administrator and/or the Wind-Down Debtor Oversight Committee members shall not be liable whatsoever except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into the Plan Administrator Agreement against any of them. The Wind-Down Debtor shall promptly pay expenses reasonably incurred by any Wind-Down Debtor Party in defending, participating in, or settling any action, proceeding or investigation in which such Wind-Down Debtor Party is a party or is threatened to be made a party or otherwise is participating in connection with the Plan Administrator Agreement or the duties, acts or omissions of the Plan Administrator or otherwise in connection with the affairs of the Wind-Down Debtor, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Wind-Down Debtor Party hereby undertakes, and the Wind-Down Debtor hereby accepts his or her undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such exculpated party is not entitled to be indemnified therefor under the Plan Administrator Agreement. The foregoing indemnity in respect of any Wind-Down Debtor Party shall survive the termination of such Wind-Down Debtor Party from the capacity for which they are indemnified.



12. No Liability of the Wind-Down Debtor

On and after the Effective Date, the Wind-Down Debtor shall have no liability on account of any Claims or Interests except as set forth herein and in the Plan Administrator Agreement. All payments and all distributions made by the Plan Administrator hereunder shall be in exchange for all Claims or Interests against the Debtors.

**I. Sources of Consideration for Plan Distributions**

Distributions under the Plan shall be funded by (i) the proceeds of Purchaser's payment obligations under Sections 2.1 and 2.2 of the Asset Purchase Agreement and distributions of Acquired Coins pursuant to Sections 6.12, and 6.14 of the Asset Purchase Agreement, (ii) the Wind-Down Debtor from the Wind-Down Debtor Assets; *provided, however*, that Allowed Professional Fee Claims shall be paid from the Professional Fee Escrow Account in the first instance. The Wind-Down Debtor Assets shall be used to pay the Wind-Down Debtor Expenses (including the compensation of the Plan Administrator and any professionals retained by the Wind-Down Debtor), and to satisfy payment of Allowed Claims and Interests as set forth in the Plan.

**J. Corporate Existence and Dissolution**

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) in effect prior to the Effective Date, except to the extent such certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) are amended pursuant to the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings under applicable state or federal law).

On and after the Effective Date, the Wind-Down Debtor will be authorized and directed to implement the Plan and any applicable orders of the Bankruptcy Court, and the Wind-Down Debtor shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

Upon a certification to be Filed with the Bankruptcy Court by the Plan Administrator of all distributions having been made and completion of all of its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Wind-Down Debtor shall be deemed to be dissolved without any further action by the Debtors or the Wind-Down Debtor, including the Filing of any documents with the secretary of state for the state in which the Wind-Down Debtor are formed or any other jurisdiction. The Plan Administrator, however, shall have authority to take all necessary actions to dissolve the Debtors or the Wind-Down Debtor in and withdraw the Wind-Down Debtor from applicable states.

As soon as practicable after the Effective Date, the Wind-Down Debtor shall take such actions as the Wind-Down Debtor may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Wind-Down Debtor on behalf of any Wind-Down Debtor without need for any action or approval by the shareholders or board of directors or managers of such Debtor. On and after the Effective Date, the Debtors or the Wind-Down Debtor (1) for

all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. Pursuant to the terms of this Plan, any Money Transmitter Licenses that have not been terminated shall be deemed withdrawn and no further action is required to be taken by the Debtors or the Wind-Down Debtor to effectuate such withdrawal; *provided* that, following the Effective Date, the Debtors or the Wind-Down Debtor, as applicable, shall use commercially reasonable efforts to comply with all state banking department requirements for the surrender of a Money Transmitter License. Nothing in this Plan shall be construed to limit the rights of creditors, Debtors, the Wind-Down Debtor, or regulators to pursue recoveries against surety bonds maintained by the Debtors in connection with this Money Transmitter Licenses. Notwithstanding such Debtors' dissolution, such Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

#### **K. Corporate Action**

Upon the Effective Date, all actions contemplated under the Plan, Definitive Documents, and Asset Purchase Agreement shall be deemed authorized and approved in all respects, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, managing-members, limited or general partners, or officers of the Debtors, the Wind-Down Debtor or any other Entity, including: (1) appointment of the directors, managers, members, and officers for the Wind-Down Debtor as provided herein; (2) the issuances, transfer, and distribution of the Wind-Down Debtor Assets; (3) the formation of the Wind-Down Debtor and appointment of the Plan Administrator and Wind-Down Debtor Oversight Committee; (4) the formation of any entities pursuant to and the implementation of the Plan and performance of all actions and transactions contemplated hereby and thereby; (5) the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; and (6) all other acts or actions contemplated by the Plan, Definitive Documents, and Asset Purchase Agreement or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions (including effectuating the Restructuring Transactions Memorandum and the Customer Onboarding Protocol) (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan, Definitive Documents, and Asset Purchase Agreement involving the corporate structure of the Debtors or the Wind-Down Debtor, as applicable, and any corporate action required by the Debtors or the Wind-Down Debtor, as applicable, in connection with the Plan shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Wind-Down Debtor, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Wind-Down Debtor, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, Securities, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Wind-Down Debtor, and any and all other agreements, documents, Securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Article IV.K shall be effective notwithstanding any requirements under non-bankruptcy law.

#### **L. Vesting of Assets in the Wind-Down Debtor**

Except as otherwise provided in the Plan, or in any agreement, instrument, or other document incorporated in the Plan, notwithstanding any prohibition of assignability under applicable non-bankruptcy law and in accordance with section 1141 of the Bankruptcy Code, on the Effective Date, all property

constituting Wind-Down Debtor Assets, including all Vested Causes of Action of the Debtors (unless otherwise released, waived, compromised, settled, transferred, or discharged pursuant to the Plan), and any property acquired by any of the Debtors under the Plan shall vest in the Wind-Down Debtor, free and clear of all Liens, Claims, charges, or other encumbrances.

**M. Cancellation of Notes, Instruments, Certificates, and Other Documents**

On the later of the Effective Date and the date on which distributions are made pursuant to the Plan (if not made on the Effective Date), except for the purpose of evidencing a right to and allowing Holders of Claims and Interests to receive a distribution under the Plan or to the extent otherwise specifically provided for in the Plan, the Confirmation Order, or any agreement, instrument, or other document entered into in connection with or pursuant to the Plan or the Restructuring Transactions (including, without limitation, the Definitive Documents and the Asset Purchase Agreement), all notes, bonds, indentures, certificates, Securities, shares, purchase rights, options, warrants, collateral agreements, subordination agreements, intercreditor agreements, or other instruments or documents directly or indirectly evidencing, creating, or relating to any indebtedness or obligations of, or ownership interest in, the Debtors, giving rise to any Claims against or Interests in the Debtors or to any rights or obligations relating to any Claims against or Interests in the Debtors shall be deemed cancelled without any need for a Holder to take further action with respect thereto.

**N. Effectuating Documents; Further Transactions**

On and after the Effective Date, the Debtors, and its directors, managers, partners, officers, authorized persons, and members thereof, and the Wind-Down Debtor and Plan Administrator are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, Definitive Documents, and Asset Purchase Agreement, in the name of and on behalf of the Debtors and Wind-Down Debtor, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

**O. Section 1146(a) Exemption**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Wind-Down Debtor, the Purchaser, or to any other Entity) of property under the Plan, Definitive Documents, and Asset Purchase Agreement or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Wind-Down Debtor; (2) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, including the Asset Purchase Agreement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall

comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**P. Preservation of Rights of Action**

In accordance with section 1123(b) of the Bankruptcy Code, the Wind-Down Debtor shall succeed to all rights to commence and pursue any and all Vested Causes of Action of the Debtors, whether arising before or after the Petition Date, including, without limitation, any actions specifically enumerated in the Schedule of Retained Causes of Action other than Causes of Action released, waived, settled, compromised, or transferred. Such rights shall be preserved by the Debtors and Wind-Down Debtor and shall vest in the Wind-Down Debtor, with the Wind-Down Debtor's rights to commence, prosecute, or settle such Causes of Action preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action expressly released, waived, settled, compromised, or transferred by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan or pursuant to the Asset Purchase Agreement, which shall be deemed released and waived by the Debtors and Wind-Down Debtor as of the Effective Date.

The Wind-Down Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the beneficiaries of the Wind-Down Debtor and in accordance with the Plan Administrator Agreement and the Plan. **No Entity may rely on the absence of a specific reference in the Schedules of Assets and Liabilities or Statement of Financial Affairs, the Plan, the Plan Supplement, the Disclosure Statement, or the Schedule of Retained Causes of Action to any Cause of Action against it as any indication that the Debtors or the Wind-Down Debtor, as applicable, will not pursue any and all available Causes of Action of the Debtors against it. The Wind-Down Debtor, on behalf of the Debtors and the Wind-Down Debtor, expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise provided in the Plan, including Article VIII of the Plan.** Unless any Cause of Action of the Debtors is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or pursuant to a Final Order, the Wind-Down Debtor, on behalf of the Debtors and Wind-Down Debtor and in accordance with the Plan Administrator Agreement, expressly reserves all such Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation or Consummation.

The Wind-Down Debtor, on behalf of the Debtors, reserves and shall retain such Causes of Action of the Debtors notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold against any Entity shall vest in the Wind-Down Debtor, except as otherwise provided in the Plan, including Article VIII of the Plan. The Wind-Down Debtor, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Wind-Down Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court in accordance with the Plan.

**Q. Election to Contribute Third-Party Claims**

Because aggregating all Contributed Third-Party Claims may enable the pursuit and settlement of such litigation claims in a more efficient and effective manner, each Holder of a Claim or Interest may

agree, by electing on its ballot or opt-in form, to contribute its Contributed Third-Party Claims to the Wind-Down Debtor. By electing such option on its ballot or opt-in form, each Contributing Claimant agrees that, subject to the occurrence of the Effective Date and the formation of the Wind-Down Debtor, it will be deemed, without further action, (i) to have irrevocably contributed its Contributed Third-Party Claims to the Wind-Down Debtor, and (ii) to have agreed to execute any documents reasonably requested by the Debtors or the Wind-Down Debtor to memorialize and effectuate such contribution.

#### **R. Contribution of Contributed Third-Party Claims**

On the Effective Date, all Contributed Third-Party Claims will be irrevocably contributed to the Wind-Down Debtor and shall thereafter be Wind-Down Debtor Assets for all purposes. No Person may rely on the absence of a specific reference in the Plan, the Disclosure Statement, the Confirmation Order, the Plan Administrator Agreement, the Plan Supplement, or any other document as any indication that the Wind-Down Debtor will or will not pursue any and all available Contributed Third-Party Claims against such Person. The Wind-Down Debtor shall have, retain, reserve, and be entitled to assert all Contributed Third-Party Claims fully to the same extent that the Contributing Claimants could have asserted such claims prior to the Effective Date. For the avoidance of doubt, the Contributed Third-Party Claims shall not include the rights of any of the Contributing Claimants to receive the distributions under the Plan on account of their Claims or Interests.

#### **S. Closing the Chapter 11 Cases**

On and after the Effective Date, the Wind-Down Debtor shall be permitted to classify all of the Chapter 11 Cases of the Debtors except for the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, as closed, and all contested matters relating to any of the Debtors, including objections to Claims or Interests and any adversary proceedings, may be administered and heard in the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, irrespective of whether such Claims or Interests were Filed or such adversary proceeding was commenced against a Debtor whose Chapter 11 Case was closed.

### **ARTICLE V.**

#### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

##### **A. Assumption and Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy other than the Side-A Policy. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions,



assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

**B. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or the Wind-Down Debtor, as applicable, under such Executory Contract or Unexpired Lease. Without limiting the general nature of the foregoing, and notwithstanding any non-bankruptcy law to the contrary, the Debtors and Wind-Down Debtor expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to any rejected Executory Contract or Unexpired Lease.

**C. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Counterparties to Executory Contracts or Unexpired Leases listed subject to rejection under the Plan shall be served with a notice of rejection of Executory Contracts and Unexpired Leases with the Plan Supplement. Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Claims, Noticing, and Solicitation Agent and served on the Debtors or Wind-Down Debtor, as applicable, no later than thirty days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, or the Wind-Down Debtor, the Estates, or their property without the need for any objection by the Wind-Down Debtor or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed released, and be subject to the permanent injunction set forth in Article VIII.D of the Plan, including any Claims against any Debtor listed on the Debtors' schedules as unliquidated, contingent, or disputed.** All Allowed Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease shall be treated as General Unsecured Claims in accordance with Article III.C of the Plan.

**D. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed**

The Debtors, the Wind-Down Debtor, or the Purchaser, as applicable pursuant to the Asset Purchase Agreement, shall pay Cures, if any, on the Effective Date. The Debtors shall provide notice of the amount and timing of payment of any such Cure to the parties to the applicable assumed Executory Contracts or Unexpired Leases as part of the Plan Supplement. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure that differ from the ordinary course amounts paid or proposed to be paid by the Debtors, the Wind-Down Debtor, or the Purchaser shall be dealt with in the ordinary course of business and, if needed, shall be Filed with the Claims, Noticing, and Solicitation Agent on or before thirty days after the Effective Date. **If any counterparty to an Executory Contract or Unexpired Lease does not receive a notice of assumption and applicable cure amount, such counterparty shall have until on or before thirty days after the Effective Date to bring forth and File a request for payment of Cure.** Any such request that is not timely Filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Debtor or the Wind-Down Debtor, without the need for any objection by the Wind-Down Debtor or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied and released upon payment by the Debtors or

the Wind-Down Debtor or the Purchaser of the Cure in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty); *provided, however*, that nothing herein shall prevent the Wind-Down Debtor or the Purchaser, as applicable, from paying any Cure Claim despite the failure of the relevant counterparty to File such request for payment of such Cure. The Wind-Down Debtor or the Purchaser may also settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be Filed with the Bankruptcy Court on or before thirty days after the Effective Date. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' first scheduled omnibus hearing for which such objection is timely Filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

In the event of a dispute regarding: (1) the amount of any Cure Claim, (2) the ability of the Debtors, the Wind-Down Debtor, Purchaser, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed (or assumed and assigned, as applicable), or (3) any other matter pertaining to assumption or assignment, then any disputed Cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made as soon as reasonably practicable following, and in accordance with, the entry of a Final Order of the Bankruptcy Court resolving such dispute or as may be agreed upon by the Debtors, the Wind-Down Debtor, or Purchaser, as applicable, and the counterparty to the Executory Contract or Unexpired Lease, and any such unresolved dispute shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise or assignment of any Executory Contract or Unexpired Lease to the Purchaser and full payment of any applicable Cure pursuant to this Article V.D, or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty), shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assumed and assigned in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure has been fully paid pursuant to this Article V.D, in the amount and at the time in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty), shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, in the event that any counterparty to an Executory Contract or Unexpired Lease receives a notice of assumption and applicable proposed Cure amount, and disputes the Debtors' proposed Cure amount, such party shall not be required to File a Proof of Claim with respect to such dispute. Any counterparty to an Executory Contract or Unexpired Lease that does not receive a notice or applicable proposed Cure amount, and believes a Cure amount is owed, shall have thirty days after the Effective Date to File a Proof of Claim with respect to such alleged Cure amount, which Claim shall not be expunged until such Cure dispute is resolved.**



#### **E. Insurance Policies**

Each D&O Liability Insurance Policy (including, without limitation, any “tail policy” and all agreements, documents, or instruments related thereto) other than the Side-A Policy shall be assumed, in their entirety, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date, pursuant to sections 105 and 365 of the Bankruptcy Code with the Wind-Down Debtor being authorized to pursue any proceeds thereof on behalf of the Debtors or the Wind-Down Debtor. The Side-A Policy shall ride through these Chapter 11 Cases with the Debtors, and the Wind-Down Debtor preserves all avoidance and other actions in connection with the premium paid thereunder. All beneficiaries under the D&O Insurance Policies reserve their rights under such D&O Insurance Policies subject to the limitations set forth in this Plan.

The Debtors or the Wind-Down Debtor, as applicable, shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policy (including, without limitation, any “tail policy” and all agreements, documents, or instruments related thereto) in effect prior to the Effective Date, and any current and former directors, officers, managers, and employees of the Debtors who served in such capacity at any time before or after the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy subject to the terms thereof regardless of whether such directors, officers, managers, and employees remain in such positions after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Debtors or the Wind-Down Debtor shall retain the ability to supplement such D&O Liability Insurance Policy as the Debtors or Wind-Down Debtor may deem necessary, subject to the prior written consent of the Wind-Down Debtor. Notwithstanding anything to the contrary contained in the Plan, the Wind-Down Debtor shall be entitled to pursue avoidance of the premium paid for the XL Specialty Insurance Company Cornerstone A-Side Management Liability Insurance Policy No. ELU184179-22, and nothing in this Plan shall be deemed a waiver or abrogation of any such rights.

The Debtors shall continue to satisfy their obligations under their insurance policies in full and continue such policies in the ordinary course of business. Each of the Debtors’ insurance policies, and any agreements, documents, or instruments relating thereto shall be treated as Executory Contracts under the Plan. On the Effective Date: (a) the Debtors shall be deemed to have assumed all such insurance policies and any agreements, documents, and instruments relating thereto in their entirety; and (b) such insurance policies and any agreements, documents, or instruments relating thereto shall revert in the applicable Debtors or the Wind-Down Debtor unaltered.

#### **F. Reservation of Rights**

Nothing contained in the Plan or the Plan Supplement (unless otherwise explicitly provided) shall constitute an admission by the Debtors or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor or the Wind-Down Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Wind-Down Debtor, as applicable, shall have forty-five days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease, including by rejecting such contract or lease effective as of the Confirmation Date.

#### **G. Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

#### **H. Contracts and Leases Entered into After the Petition Date**

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed under section 365 of the Bankruptcy Code, will be performed by the applicable Debtor or Wind-Down Debtor liable thereunder in the ordinary course of its business. Such contracts and leases that are not rejected under the Plan shall survive and remain unaffected by entry of the Confirmation Order.

### **ARTICLE VI.**

#### **PROVISIONS GOVERNING DISTRIBUTIONS**

##### **A. Timing and Calculation of Amounts to Be Distributed**

Except (1) as otherwise provided herein, (2) upon a Final Order, or (3) as otherwise agreed to by the Debtors, the Purchaser, or the Wind-Down Debtor, as the case may be, and the Holder of the applicable Claim, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the next Distribution Date after such Claim becomes, as applicable, an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim shall receive the full amount of distributions that the Plan provides for Allowed Claims in the applicable Class from the Distribution Agent. In the event that any payment or distribution under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or distribution may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as specifically provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

##### **B. Rights and Powers of Distribution Agent**

###### **1. Powers of the Distribution Agent**

The Distribution Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties and exercise its rights under the Plan; (b) make all distributions contemplated under the Plan; (c) employ professionals to represent it with respect to its responsibilities and powers; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

From and after the Effective Date, the Distribution Agent, solely in its capacity as Distribution Agent, shall be exculpated by all Entities, including, without limitation, holders of Claims against and Interests in the Debtors and other parties in interest, from any and all Claims, Causes of Action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon such Distribution Agent by the Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law, except for actions or omissions to act arising out of the gross negligence or willful misconduct, fraud, malpractice, criminal conduct, or ultra vires acts of such Distribution Agent. No holder of a Claim or Interest or other party in interest shall have or pursue any Claim or Cause of Action vested in a Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by such Distribution Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred on or after the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Distribution Agent on or after the Effective Date and any reasonable compensation and expense reimbursement claims (including reasonable attorney and/or other professional fees and expenses) made by such Distribution Agent shall be paid in Cash by the Wind-Down Debtor.

**C. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

1. Distributions Generally

Except as otherwise provided in the Plan (including in paragraph 8 below), the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the applicable register or in the Debtors' records as of the date of any such distribution (as applicable), including the address set forth in any Proof of Claim filed by that Holder.

2. Distributions on Account of Obligations of Multiple Debtors

For all purposes associated with distributions under the Plan, all guarantees by any Debtor of the obligations of any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be deemed eliminated so that any obligation that could otherwise be asserted against more than one Debtor shall result in a single distribution under the Plan. Any such Claims shall be subject to all potential objections, defenses, and counterclaims, and to estimation pursuant to section 502(c) of the Bankruptcy Code.

3. Record Date of Distributions

On the Distribution Record Date, the various transfer registers for each Class of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes in the record Holders of any Claims or Interests. The Distribution Agent shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date. In addition, with respect to payment of any Cure amounts or disputes over any Cure amounts, neither the Debtors nor the Distribution Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable Executory Contract or Unexpired Lease as of the Effective Date, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure amount.

4. Special Rules for Distributions to Holders of Disputed Claims and Interests

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the Wind-Down Debtor, on the one hand, and the Holder of a Disputed Claim or Interest, on the other hand, or as set forth in a Final Order, no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Interest until all of the Disputed Claim or Interest has become an Allowed Claim or Interest or has otherwise been resolved by settlement or Final Order; *provided* that, if the Wind-Down Debtor does not dispute a portion of an amount asserted pursuant to an otherwise Disputed Claim or Interest, the Distribution Agent may make a partial distribution on account of that portion of such Claim or Interest that is not Disputed at the time and in the manner that the Distribution Agent makes distributions to similarly situated Holders of Allowed Claims or Interests pursuant to the Plan. Any dividends or other distributions arising from property distributed to Holders of Allowed Claims or Interests, as applicable, in a Class and paid to such Holders under the Plan shall also be paid, in the applicable amounts, to any Holder of a Disputed Claim or Interest, as applicable, in such Class that becomes an Allowed Claim or Interest after

the date or dates that such dividends or other distributions were earlier paid to Holders of Allowed Claims or Interests in such Class.

5. De Minimis Distributions; Minimum Distributions

The Distribution Agent shall not make any Cash distributions to any Holder of an Allowed Claim or Interest pursuant to Article III.C.1-11 of this Plan on account of such Allowed Claim or Interest if such distribution is valued, in the reasonable discretion of the Distribution Agent, at less than \$1.00, and each Holder of an Allowed Claim or Interest to which this limitation applies shall not be entitled to any distributions under the Plan. Notwithstanding anything to the contrary in this Plan, there shall be no minimum distribution threshold on account of distributions of any Cryptocurrency to Holders of Allowed Account Holder Claims and Allowed OpCo General Unsecured Claims.

6. Undeliverable Distributions and Unclaimed Property

In the event that either (a) a distribution to any Holder is returned as undeliverable or (b) the Holder of an Allowed Claim or Interest does not respond to a request by the Debtors or the Distribution Agent for information necessary to facilitate a particular distribution, no distribution to such Holder shall be made unless and until the Distribution Agent has determined the then-current address of such Holder or received the necessary information to facilitate a particular distribution, at which time such distribution shall be made to such Holder without interest, dividends, or other accruals of any kind; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code on the date that is one year after the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Wind-Down Debtor automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable local, state, federal, or foreign escheat, abandoned, or unclaimed property laws to the contrary), and the Claim or Interest of any Holder to such property or interest in property shall not be entitled to any distributions under the Plan.

7. Manner of Payment Pursuant to the Plan

At the option of the Distribution Agent, any Cash payment to be made hereunder may be made by check, wire transfer, automated clearing house, credit card, or as otherwise provided in applicable agreements.

8. Distributions of Net Owed Coins; Additional Bankruptcy Distributions

As a general matter, the Purchaser will allocate each Account Holder's Net Owed Coins to its account on the Binance.US Platform, and each Holder of OpCo General Unsecured Claim's Pro Rata share of the Distributable Cryptocurrency (in Cash) to its account on the Binance.US Platform in accordance with, and subject to, the provisions of Section 6.12 of the Asset Purchase Agreement.

Subject to the terms of the Asset Purchase Agreement, the Purchaser may make Additional Bankruptcy Distributions to Transferred Creditors, including Distributable OpCo Cash and/or other Wind-Down Debtor Assets, corresponding to their Pro Rata shares of such Additional Bankruptcy Distribution (if such Additional Bankruptcy Distribution is in Cryptocurrency, based on the Transferred Cryptocurrency Value of the Cryptocurrency included in such Additional Bankruptcy Distribution), all in accordance with any applicable Post-Bankruptcy Statement (as defined in the Asset Purchase Agreement).

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim does not become a Transferred Creditor prior to the date that is three (3) months following the later of the Closing Date or the date on which the terms and conditions for the Binance.US Platform are made available for such Person

to accept (as provided in the Customer Onboarding Protocol), then Purchaser shall convert any Cryptocurrency allocable to such Person into U.S. Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such U.S. Dollars, together with any cash or others assets in respect of such Persons, to the Debtors within five (5) Business Days, for further distribution by the Debtors in accordance with this Plan and the Customer Onboarding Protocol.

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim is located in an Unsupported Jurisdiction (as defined in the Asset Purchase Agreement), then the Net Owed Coins, Distributable Cryptocurrency (in Cash) and Additional Bankruptcy Distributions, if applicable, allocable to such Person shall be handled pursuant to Section 6.12(b) or, if applicable, Section 6.14(d) of the Asset Purchase Agreement. Notwithstanding anything to the contrary in the Asset Purchase Agreement, this Plan, or any Definitive Document, if any Account Holder or Holder of an Allowed OpCo General Unsecured Claim in an Unsupported Jurisdiction elects to not become a Transferred Creditor prior to the date that is three (3) months following the later of the Closing Date or the date on which the terms and conditions for the Binance.US Platform are made available for such Person to accept (as provided in the Customer Onboarding Protocol), then Purchaser shall on the date that is three (3) months following the later of the Closing Date or the date which the terms and conditions for the Binance.US Platform are made available for such person to accept, convert any Cryptocurrency allocable to such Person into U.S. Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such U.S. Dollars, together with any cash or others assets in respect of such Persons, to the Debtors within five (5) Business Days, for further distribution by the Debtors in accordance with this Plan and the Customer Onboarding Protocol.

Purchaser shall have no responsibility to make any distributions other than as contemplated by Sections 6.12 and 6.14 of the Asset Purchase Agreement.

#### **D. Compliance Matters**

In connection with the Plan, to the extent applicable, the Debtors, the Wind-Down Debtor, any Distribution Agent, and any other applicable withholding and reporting agents shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including wind-down a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms that are reasonable and appropriate; *provided* that the Wind-Down Debtor and the Distribution Agent, as applicable, shall request appropriate documentation from the applicable distributees and allow such distributees a reasonable amount of time to respond. The Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

#### **E. Securities Registration Exemption**

To the extent that any Cryptocurrency (including VGX) is deemed to be a “security” (as defined in section 2(a)(1) of the Securities Act, section 101 of the Bankruptcy Code, or by any applicable laws of any Governmental Unit) by the SEC or any Governmental Unit, such Cryptocurrency to be offered, issued and distributed to Holders of Account Holder Claims or any other Holders of Claims hereunder, in each case in exchange for such Claims, shall be exempt, without any further act or action by any Entity, from registration



under the Securities Act or any similar federal, state, or local law in reliance upon (i) section 1145 of the Bankruptcy Code (except with respect to an entity that is an “underwriter” as defined in subsection (b) of section 1145 of the Bankruptcy Code) or (ii) (including with respect to an entity that is an “underwriter”) pursuant to section 4(a)(2) under the Securities Act and/or Regulation D thereunder.

Notwithstanding anything to the contrary in the Plan, no entity may require a legal opinion regarding the validity of any transaction contemplated by the Plan, including, for the avoidance of doubt, whether the Cryptocurrency, to the extent deemed to be a “security” are exempt from registration.

#### **F. Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim, asserted in government issued currency (for the avoidance of doubt, not including any Cryptocurrency) other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

#### **G. Claims Paid or Payable by Third Parties**

##### **1. Claims Paid by Third Parties**

The Debtors or the Wind-Down Debtor, as applicable, shall reduce a Claim or Interest, and such Claim or Interest (or portion thereof) shall be disallowed without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim or Interest receives a payment on account of such Claim or Interest from a party that is not a Debtor or Wind-Down Debtor (or other Distribution Agent), as applicable, including any payments made in connection with the Sale Transaction. To the extent a Holder of a Claim or Interest receives a distribution on account of such Claim or Interest and receives payment from a party that is not a Debtor or a Wind-Down Debtor (or other Distribution Agent), including payments made in connection with the Sale Transaction, as applicable, on account of such Claim or Interest, such Holder shall, within ten Business Days of receipt thereof, repay, return, or deliver any distribution held by or transferred to the Holder to the applicable Wind-Down Debtor to the extent the Holder’s total recovery on account of such Claim or Interest from the third party and under the Plan exceeds the amount of such Claim or Interest as of the date of any such distribution under the Plan. The failure of such Holder to timely repay, return, or deliver such distribution shall result in the Holder owing the applicable Wind-Down Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the ten-Business Day grace period specified above until the amount is repaid.

##### **2. Claims Payable by Third Parties**

No distributions under the Plan shall be made on account of an Allowed Claim or Interest that is payable pursuant to one of the Debtors’ insurance policies until the Holder of such Allowed Claim or Interest has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors’ insurers agrees to satisfy in full or in part a Claim or Interest (if and to the extent adjudicated by a court of competent jurisdiction or otherwise settled), then immediately upon such payment, such Claim or Interest may be expunged or reduced on the Claims Register by the Claims, Noticing, and Solicitation Agent to the extent of any such payment without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

### 3. Applicability of Insurance Policies

Except as otherwise provided herein, payments to Holders of Claims or Interests shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any rights, defenses, or Cause of Action that the Debtors, the Wind-Down Debtor or any other Entity may hold against any other Entity, including insurers, under any policies of insurance, agreements related thereto, or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers under the applicable insurance policies, agreements related thereto, and applicable non-bankruptcy law.

## **H. Setoffs and Recoupment**

Except as otherwise expressly provided for herein, each Debtor, the Wind-Down Debtor, or such Entity's designee as instructed by such Debtor, the Wind-Down Debtor, as applicable, may, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, set off against or recoup from an Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature whatsoever that the Debtor or the Wind-Down Debtor, as applicable, may have against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised, settled, or released on or prior to the Effective Date (whether pursuant to the Plan or otherwise). Notwithstanding the foregoing, except as expressly stated in Article VIII of this Plan, neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Debtors or the Wind-Down Debtor of any such Claims, rights, or Causes of Action the Debtors or the Wind-Down Debtor may possess against such Holder.

## **I. Allocation between Principal and Accrued Interest**

Except as otherwise provided herein, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof and as determined for federal income tax purposes) and second, to the extent the consideration exceeds the principal amount of the Allowed Claims, to the remaining portion of such Allowed Claim if any.

## **ARTICLE VII.**

### **PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS AND INTERESTS**

#### **A. Disputed Claims Process**

After the Effective Date, the Debtors, the Wind-Down Debtor, and any party-in-interest, shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim or Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim or Interest. If a Holder of a Claim or Interest in Class disputes the amount of their Claim or Interest as listed in the Schedules, the Holder should notify the Debtors or the Wind-Down Debtor of such dispute. If the Debtors and the Holder agree to an amended Claim amount prior to the Effective Date, the Debtors shall



file amended Schedules prior to the Effective Date. If between the Confirmation Date and the Effective Date, the dispute cannot be consensually resolved, the Holder may seek (by letter to the Court) to have the claim or interest dispute resolved before the Bankruptcy Court (and, with the consent of the Debtors, before any other court or tribunal with jurisdiction over the parties). After the Effective Date, the creditor may seek to have the claim dispute resolved before the Bankruptcy Court or any other court or tribunal with jurisdiction over the parties.

Notwithstanding anything in this Plan to the contrary: (1) all Claims against the Debtors that result from the Debtors' rejection of an Executory Contract or Unexpired Lease; (2) Claims filed to dispute the amount of any proposed Cure pursuant to section 365 of the Bankruptcy Code; and (3) Claims that the Debtors seek to have determined by the Bankruptcy Court, shall in all cases be determined by the Bankruptcy Court, if not otherwise resolved through settlement with the applicable claimant.

On the Effective Date, the Debtors or Plan Administrator, as applicable, may establish one or more accounts or funds to hold and dispose of certain assets, pursue certain litigation (including the Causes of Action preserved under the Plan or otherwise vesting in the Wind-Down Debtor), and/or satisfy certain Claims (including Claims that are contingent or have not yet been Allowed). For any such account or fund, the Debtors or the Plan Administrator, as applicable, may take the position that grantor trust treatment applies in whole or in part. To the extent such treatment applies to any such account or fund, for all U.S. federal income tax purposes, the beneficiaries of any such account or fund would be treated as grantors and owners thereof, and it is intended, to the extent reasonably practicable, that any such account or fund would be classified as a liquidating trust under section 301.7701-4 of the Treasury Regulations. Alternatively, any such account or fund may be subject to the tax rules that apply to "disputed ownership funds" under 26 C.F.R. 1.468B-9. If such rules apply, such assets would be subject to entity-level taxation, and the Debtors and the Wind-Down Debtor would be required to comply with the relevant rules.

## **B. Objections to Claims or Interests**

Except as otherwise specifically provided in the Plan, after the Effective Date, the Wind-Down Debtor shall have the sole authority on behalf of the Debtors to: (1) File, withdraw, or litigate to judgment, any objections to Claims or Interests; and (2) settle or compromise any Disputed Claim or Interest without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, the Wind-Down Debtor shall have and retain any and all rights and defenses each such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Article IV.P of the Plan. In the event that the Wind-Down Debtor settles or otherwise compromises the Signatory Governmental Claims (as defined in the Governmental Claimant Stipulation) asserted against TopCo, any other Claim Filed or asserted by a Governmental Unit against TopCo, or any other Claim Filed or asserted against TopCo in an amount greater than \$100,000, any such proposed settlement or compromise shall require approval of the Bankruptcy Court after notice and a hearing.

Any objections to Claims or Interests shall be Filed on or before the Claims Objection Bar Date. For the avoidance of doubt, any party may object to any Claims or Interests prior to the Claims Objection Bar Date. Further, the Bankruptcy Court may extend the time period to object to Claims or Interests set forth in this paragraph at any time, including before or after the expiration of one hundred eighty days after the Effective Date, in its discretion or upon request by the Debtors or any party in interest.

## **C. Estimation of Claims**

Before or after the Effective Date, the Debtors or the Wind-Down Debtor, as applicable, may (but are not required to), at any time, request that the Bankruptcy Court estimate any Disputed Claim or

Interest that is contingent or unliquidated pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any party previously has objected to such Disputed Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under sections 157 and 1334 of the Judicial Code to estimate any such Disputed Claim or Interest, including during the litigation of any objection to any Disputed Claim or Interest or during the pendency of any appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Disputed Claim or Interest that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions) and may be used as evidence in any supplemental proceedings, and the Debtors or the Wind-Down Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Disputed Claim or Interest that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen days after the date on which such Disputed Claim or Interest is estimated.

**D. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, if any portion of a Claim or Interest is a Disputed Claim or Interest, no payment or distribution provided hereunder shall be made on account of such Claim or Interest unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest; *provided* that if only a portion of a Claim or Interest is Disputed, such Claim or Interest shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account of such undisputed amount.

**E. Distributions After Allowance**

To the extent that a Disputed Claim or Interest ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim or Interest in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court Allowing any Disputed Claim or Interest becomes a Final Order, the Distribution Agent shall provide to the Holder of such Allowed Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Allowed Claim or Interest unless required under applicable bankruptcy law.

**F. No Interest**

Unless otherwise specifically provided for herein or by Final Order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims against the Debtors, and no Holder of a Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

**G. Adjustment to Claims and Interests without Objection**

Any Claim or Interest that has been paid, satisfied, amended, superseded, cancelled, or otherwise expunged (including pursuant to the Plan) may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Debtor without the Wind-Down Debtor having to File an application, motion,

complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court. Additionally, any Claim or Interest that is duplicative or redundant with another Claim or Interest against the same Debtor may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Debtor without the Wind-Down Debtor having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

#### **H. Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date.

#### **I. Disallowance of Claims or Interests**

Any Claims or Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors or the Wind-Down Debtor, as applicable.

**Except as otherwise provided herein or as agreed to by the Debtors or the Wind-Down Debtor, any and all Proofs of Claim Filed after the Bar Date shall be deemed disallowed and expunged as of the Effective Date subject to the approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.**

#### **J. Amendments to Proofs of Claim**

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Proof of Claim or Proof of Interest may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Wind-Down Debtor, and any such new or amended Proof of Claim or Proof of Interest Filed shall be deemed disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court.

### **ARTICLE VIII.**

#### **EFFECT OF CONFIRMATION OF THE PLAN**

##### **A. Releases by the Debtors**

**Notwithstanding anything contained in the Plan to the contrary, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Debtors, the Wind-Down Debtor, and their Estates, and in each case on behalf of themselves and their respective successors, assigns, and representatives, who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of, the foregoing Entities, from any and all Causes of Action, including any derivative claims, asserted or assertable on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen,**

matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, that the Debtors would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Chapter 11 Cases and related adversary proceedings, the Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, of the releases described in this Article VIII.A by the Debtors, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.A is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to the extent contemplated by Article IV.E and Article IV.F of the Plan, a bar to any of the Debtors or Wind-Down Debtor or their respective Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

Notwithstanding anything to the contrary contained herein, nothing in this Plan shall release, waive, or otherwise limit the (i) rights, duties, or obligations of the Purchaser under the Asset Purchase Agreement or the Definitive Documents and (ii) the Non-Released D&O Claims, but such Non-Released D&O Claims shall remain subject to the limitations contained in Article IV.E and Article IV.F of this Plan.

#### **B. Releases by Holders of Claims and Interests**

Except as expressly set forth in the Plan, effective on the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives, from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of any of the Debtors, that such Entity would have been legally entitled to assert in its own right (whether individually or collectively or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the

business or contractual arrangements between any Debtor and any Released Party, the Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions, or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date, *provided* that nothing in this Article VIII.B shall be construed to release the Released Parties from actual fraud, willful misconduct, or gross negligence as determined by a Final Order.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Article VIII.B, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.B is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to the extent contemplated by Article IV.F and Article IV.G of the Plan, a bar to any of the Releasing Parties or the Debtors or the Wind-Down Debtor or their respective Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

### C. Exculpation

Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor release or the third-party release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is exculpated from any Cause of Action for any act or omission arising on or after the Petition Date and prior to the Effective Date based on the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation or filing, or consummation of the Disclosure Statement, the Plan, the Special Committee Investigation, any Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), except for Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan; *provided* that nothing in the Plan shall limit the liability of professionals to their clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

To the extent that any Cryptocurrency is deemed to be a "security" by the SEC or any Governmental Unit, distribution of such Cryptocurrency shall have been done in good faith and in compliance with all applicable laws, rules, and regulations and the Exculpated Parties shall not be



liable at any time for the violation of any applicable law, rule, or regulation governing the distribution of Cryptocurrency whether such Cryptocurrency is deemed to be a “security” or otherwise.

The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

#### **D. Injunction**

The assets of the Debtors and of the Wind-Down Debtor shall be used for the satisfaction of expense obligations and the payment of Claims and Interests only in the manner set forth in this Plan and shall not be available for any other purpose. All Persons and Entities who have held, hold, or may hold Claims or Interests based upon any act, omission, transaction, or other activity of any kind or nature related to the Debtors, the Wind-Down Debtor, or the Debtors’ Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in the Plan or the Confirmation Order, shall be precluded and permanently enjoined on and after the Effective Date from interfering with the use and distribution of the Debtors’ assets in the manner contemplated by the Plan.

In addition, as of the Effective Date and subject to the occurrence of the Effective Date, except as otherwise specifically provided in this Plan or the Confirmation Order, all Persons and Entities who have held, hold, or may hold Claims or Interests that are fully satisfied pursuant to the Plan or any Claim or Interest that is subject to the releases and exculpations set forth in Article VIII.B and Article VIII.C of this Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims or Interests, except for the receipt of the payments or distributions that are contemplated by this Plan.

#### **E. Release of Liens**

Except as otherwise provided in the Plan, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan or Confirmation Order on the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or the Wind-Down Debtor, as applicable, and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as requested by the Debtors or Wind-Down Debtor to evidence the release of such Lien, including the execution, delivery, and filing or recording of such documents evidencing such releases. The presentation or filing of the Confirmation Order to or with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

**F. OSC and SEC**

Notwithstanding any language to the contrary herein, no provision shall (a) preclude the OSC or the SEC from enforcing its police or regulatory powers; or (b) enjoin, limit, impair or delay the OSC or SEC from commencing or continuing any claims, causes of action, proceeding, or investigations against any non-Debtor person or non-Debtor entity in any forum.

**G. Protection against Discriminatory Treatment**

As provided by section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Entity, including Governmental Units, shall discriminate against any Debtor or the Wind-Down Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, any Debtor or the Wind-Down Debtor, or any Entity with which a Debtor or the Wind-Down Debtor has been or is associated, solely because such Debtor or the Wind-Down Debtor was a debtor under chapter 11 of the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

**H. Document Retention**

Upon the occurrence of the Effective Date, the Debtors' books and records shall be transferred to the Wind-Down Debtor, which shall continue to preserve all financial books and records, emails, and other financial documents relating to the Debtors' business that are currently in the Debtors' possession. The Wind-Down Debtor shall not destroy or otherwise abandon any such documents or records without providing advance notice to the U.S. Securities and Exchange Commission (c/o Therese Scheuer, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, ScheuerT@SEC.GOV) and seeking further authorization from this Bankruptcy Court. Nothing in this Plan or the Confirmation Order shall affect the obligations of the pre-Effective Date Debtors, the Wind-Down Debtor, and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

**I. Reimbursement or Contribution**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

**J. Term of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code, or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. **All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.**



## **ARTICLE IX.**

### **CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

#### **A. Conditions Precedent to the Effective Date**

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Article IX.B of the Plan:

1. The Bankruptcy Court shall have entered the Confirmation Order, which shall be in a form and substance reasonably satisfactory to the Debtors and the Committee, and subject to the consent rights of Purchaser under the Asset Purchase Agreement, and such order shall be a Final Order and in full force and effect.
2. The Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan, Definitive Documents, and the Asset Purchase Agreement.
3. Each Definitive Document and each other document contained in any supplement to the Plan, including the Plan Supplement and any exhibits, schedules, amendments, modifications or supplements thereto or other documents contained therein, shall have been executed or Filed, as applicable, in form and substance consistent in all respects with the Plan, and subject to the Purchaser's consent rights under the Asset Purchase Agreement, and shall not have been modified in a manner inconsistent therewith;
4. The Professional Fee Escrow Account shall have been established and funded with Cash in accordance with Article II.B.2 of the Plan.
5. The Wind-Down Reserve shall have been established and funded with Cash in accordance with the Plan.
6. If prior to the Outside Date, the Asset Purchase Agreement shall be in full force and effect and the Sale Transaction shall have been consummated.
7. The Restructuring Transactions shall have been consummated or shall be anticipated to be consummated concurrently with the occurrence of the Effective Date in a manner consistent with the Plan, the Customer Onboarding Protocol, the other Definitive Documents, and the Asset Purchase Agreement, and the Plan shall have been substantially consummated or shall be anticipated to be substantially consummated concurrently with the occurrence of the Effective Date.

#### **B. Waiver of Conditions Precedent**

The Debtors, with the consent of the Committee and, solely to the extent related to the Asset Purchase Agreement and the Sale Transaction, prior to the Outside Date, the consent of Purchaser, may waive any of the conditions to the Effective Date set forth in Article IX.A of the Plan at any time, without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan.

**C. Effect of Non-Occurrence of Conditions to Consummation**

If the Effective Date does not occur within 120 days after the Confirmation Date, then the Plan will be null and void in all respects, any and all compromises or settlements not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including with respect to the fixing, limiting, or treatment of any Claim or Interest, including, without limitation, the Alameda Loan Facility Claims), shall be deemed null and void, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims, Interests, or Causes of Action held by any Debtor or any other Entity; (2) prejudice in any manner the rights of any Debtor or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity in any respect.

**ARTICLE X.**

**MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

**A. Modification of Plan**

Subject to the limitations and terms contained in the Plan and Purchaser's consent rights under the Asset Purchase Agreement, the Debtors, with the consent of the Committee, reserve the right to (1) amend or modify the Plan before the entry of the Confirmation Order, in accordance with the Bankruptcy Code and the Bankruptcy Rules and (2) after the entry of the Confirmation Order, the Debtors or the Wind-Down Debtor, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein.

**B. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall constitute approval of all modifications or amendments to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

**C. Revocation or Withdrawal of Plan**

The Debtors reserve the right, with the consent of the Committee, to revoke or withdraw the Plan with respect to any or all Debtors before the Confirmation Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (1) the Plan will be null and void in all respects; (2) any settlement or compromise not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Classes of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effectuated by the Plan, and any document or agreement executed pursuant to the Plan will be null and void in all respects; and (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity, (b) prejudice in any manner the rights of any Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

## ARTICLE XI.

### RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Claims or other Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed or assumed and assigned; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;

4. ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor or the Estates that may be pending on the Effective Date;

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, and other agreements or documents created in connection with the Plan; *provided* that the Bankruptcy Court shall not retain jurisdiction over disputes concerning documents contained in the Plan Supplement that have a jurisdictional, forum selection, or dispute resolution clause that refers disputes to a different court;

7. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or an Interest for amounts not timely repaid pursuant to Article VI of the Plan; (b) with respect to the releases, injunctions, and other provisions contained in Article VIII of the Plan, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) anything that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan and the Confirmation Order; or (d) related to section 1141 of the Bankruptcy Code;

11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

13. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

14. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases with respect to any Entity, and resolve any cases, controversies, suits, or disputes that may arise in connection with any Entity's rights arising from or obligations incurred in connection with the Plan;

15. hear and determine matters concerning local, state, federal, and foreign taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

16. hear and determine matters concerning exemptions from state and federal registration requirements in accordance with section 1145 of the Bankruptcy Code;

17. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

18. enforce all orders previously entered by the Bankruptcy Court; and

19. hear and determine any other matters related to the Chapter 11 Cases and not inconsistent with the Bankruptcy Code or the Judicial Code.

Nothing herein limits the jurisdiction of the Bankruptcy Court to interpret and enforce the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, or the Disclosure Statement, without regard to whether the controversy with respect to which such interpretation or enforcement relates may be pending in any state or other federal court of competent jurisdiction.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article XI, the provisions of this Article XI shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

Unless otherwise specifically provided herein or in a prior order of the Bankruptcy Court, the Bankruptcy Court shall have exclusive jurisdiction to hear and determine disputes concerning Claims against or Interests in the Debtors that arose prior to the Effective Date.

## ARTICLE XII.

### MISCELLANEOUS PROVISIONS

#### A. Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Debtor, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, exculpations, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or Interest has voted on the Plan.

#### B. Additional Documents

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Wind-Down Debtor, and all Holders of Claims and Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### C. Payment of Statutory Fees

All fees and applicable interest payable pursuant to section 1930 of the Judicial Code and 31 U.S.C. § 3717, as applicable, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by each of the Debtors or the Wind-Down Debtor (or the Distribution Agent on behalf of the Wind-Down Debtor) for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first.

#### D. Dissolution of Statutory Committees

On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases; *provided*, however, that such committees will remain in existence for the limited purposes of (a) pursuing, supporting, or otherwise participating in, any outstanding appeals in the Chapter 11 Cases; and (b) filing, objecting, or otherwise participating in, any final fee applications of Professionals.

#### E. Reservation of Rights

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests, unless and until the Effective Date has occurred.

## **F. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of each such Entity.

## **G. Service of Documents**

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtors or the Wind-Down Debtor shall be served on:

Debtors

**Voyager Digital Holdings, Inc.**

33 Irving Place  
New York, New York 10003  
Attention: David Brosgol  
General Counsel,  
E-mail address: dbrosgol@investvoyager.com

with copies for information only (which shall not constitute notice) to:

Counsel to the Debtors

**Kirkland & Ellis LLP**

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## **H. Entire Agreement; Controlling Document**

Except as otherwise indicated, on the Effective Date, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations with respect to the subject matter of the Plan, all of which will have become merged and integrated into the Plan; *provided, however*, that notwithstanding the foregoing or anything to the contrary herein, to the extent there is any conflict between the Plan and the Confirmation Order, on the one hand, and the Asset Purchase Agreement, on the other hand, the Asset Purchase Agreement shall govern solely in the event the Sale Transaction is consummated. Except as set forth in the Plan, in the event that any provision of the Disclosure Statement, the Plan Supplement, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.



## **I. Plan Supplement**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Claims, Noticing, and Solicitation Agent at <https://cases.stretto.com/Voyager> or the Bankruptcy Court's website at <http://www.nysb.uscourts.gov>. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

## **J. Non-Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, subject to the Purchaser's consent rights under the Asset Purchase Agreement prior to the Outside Date, shall have the power to alter and interpret such term or provision to make it valid or enforceable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' consent, consistent with the terms set forth herein; and (3) non-severable and mutually dependent.

## **K. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and solely to the extent permitted by section 1125(e) of the Bankruptcy Code, the Debtors, and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties nor individuals or the Debtors or the Wind-Down Debtor will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan or any previous plan.

## **L. Waiver or Estoppel**

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed prior to the Confirmation Date.



Dated: March 5, 2023

VOYAGER DIGITAL HOLDINGS, INC.  
on behalf of itself and all other Debtors

/s/ Stephen Ehrlich

Stephen Ehrlich  
Co-Founder and Chief Executive Officer  
Voyager Digital Holdings, Inc.

**Exhibit B**

**Redline**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
VOYAGER DIGITAL HOLDINGS, INC. <i>et al.</i> , <sup>1</sup>	)	Case No. 22-10943 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**THIRD AMENDED JOINT PLAN OF VOYAGER DIGITAL HOLDINGS, INC. AND  
ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Joshua A. Sussberg, P.C.  
Christopher Marcus, P.C.  
Christine A. Okike, P.C.  
Allyson B. Smith (admitted *pro hac vice*)  
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Facsimile: (212) 446-4900

**NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE,  
COMMITMENT, OR LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY  
OTHER PARTY IN INTEREST, AND THIS PLAN IS SUBJECT TO APPROVAL BY THE  
BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS. THIS PLAN IS NOT AN  
OFFER WITH RESPECT TO ANY SECURITIES.**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, LTD. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

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## **INTRODUCTION**

Voyager Digital Holdings, Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (each a “Debtor” and, collectively, the “Debtors”) propose this third amended joint plan (the “Plan”) for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings set forth in Article I.A of the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, properties and operations, projections, risk factors, a summary and analysis of this Plan, and certain related matters.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **ARTICLE I.**

### **DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES**

#### **A. Defined Terms**

Capitalized terms used in this Plan have the meanings ascribed to them below.

1. “3AC” means Three Arrows Capital, Ltd and any of its Affiliates or subsidiaries.
2. “3AC Claims” means the claims or causes of action asserted or assertable by the Debtors against 3AC, whether in the 3AC Liquidation Proceeding or otherwise.
3. “3AC Liquidation Proceeding” means that certain liquidation proceeding captioned *In the Matter of Three Arrows Capital Ltd. and in the Matter of Sections 159(1) and 162(1)(a) and (b) of the Insolvency Act 2003*, Claim No. BVIHC(COM)2022/0119 before the Eastern Caribbean Supreme Court in the High Court of Justice in the British Virgin Islands and the chapter 15 foreign recognition proceeding captioned *In re Three Arrows Capital, Ltd.*, No. 22-10920 (Bankr. S.D.N.Y. Jul. 1, 2022).
4. “3AC Loan” means that loan of 15,250 Bitcoins and 350 million USDC to 3AC pursuant to that certain master loan agreement dated March 4, 2022 by and between 3AC, as borrower, and OpCo and HTC Trading, Inc., as lenders.
5. “3AC Recovery” means the recovery, if any, of the Debtors from 3AC on account of the 3AC Claims.
6. “Account” means any account at OpCo held by an Account Holder relating to Cryptocurrency, which Account is identified in the Debtors’ books and records as holding Cryptocurrency as of the Petition Date.



7. “*Account Holder*” means any Person or Entity who holds an Account with OpCo as of the Petition Date.

8. “*Account Holder Claim*” means any Claim against the Debtors that is held by an Account Holder on account of such Holder’s Account.

9. “*Acquired Assets*” has the meaning ascribed to it in the Asset Purchase Agreement.

10. “*Acquired Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

11. “*Acquired Coins Value*” has the meaning ascribed to it in the Asset Purchase Agreement.

12. “*Additional Bankruptcy Distribution*” has the meaning ascribed to it in the Asset Purchase Agreement.

13. “*Administrative Claim*” means a Claim against a Debtor for the costs and expenses of administration of the Chapter 11 Cases arising on or after the Petition Date and prior to the Effective Date pursuant to section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors’ business and (b) Allowed Professional Fee Claims.

14. “*Administrative Claims Bar Date*” means the deadline for Filing requests for payment of Administrative Claims (other than requests for payment of Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), which: (a) with respect to Administrative Claims other than Professional Fee Claims, shall be thirty days after the Effective Date; and (b) with respect to Professional Fee Claims, shall be forty-five days after the Effective Date.

15. “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code. With respect to any Person that is not a Debtor, the term “*Affiliate*” shall apply to such Person as if the Person were a Debtor.

16. “*Alameda*” means Alameda Ventures Ltd., along with its Affiliates and subsidiaries.

17. “*Alameda Claims*” means the claims or causes of action asserted or assertable by the Debtors against Alameda, whether in the FTX Bankruptcy Proceeding or otherwise.

18. “*Alameda Loan Agreement*” means that certain unsecured loan agreement, dated as of June 21, 2022, as amended, restated, amended and restated, modified, or supplemented from time to time, by and among HoldCo, as the borrower, TopCo, as the guarantor, and Alameda, as the lender thereto.

19. “*Alameda Loan Facility*” means that certain unsecured loan facility provided for under the Alameda Loan Agreement.

20. “*Alameda Loan Facility Claims*” means any Claim against any Debtor derived from, based upon, or arising under the Alameda Loan Agreement and any fees, costs, and expenses that are reimbursable by any Debtor pursuant to the Alameda Loan Agreement.

21. “*Alameda Recovery*” means the recovery, if any, of the Debtors from Alameda on account of the Alameda Claims.

22. “*Allowed*” means, with respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim or Interest that is evidenced by a Proof of Claim timely Filed by the Bar Date or a request for payment of Administrative Claim timely Filed by the Administrative Claims Bar Date (or for which Claim or Interest under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court a Proof of Claim or a request for payment of Administrative Claim is not or shall not be required to be Filed); (b) a Claim or Interest that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; (c) a Claim or Interest Allowed pursuant to the Plan, any stipulation approved by the Bankruptcy Court, any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or a Final Order of the Bankruptcy Court, or (d) a Claim or Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court; *provided* that, with respect to a Claim or Interest described in clauses (a) and (b) above, such Claim or Interest shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or if such an objection is so interposed, such Claim or Interest shall have been Allowed by a Final Order. Any Claim or Interest that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes. A Proof of Claim Filed after and subject to the Bar Date or a request for payment of an Administrative Claim Filed after and subject to the Administrative Claims Bar Date, as applicable, shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. “Allow” and “Allowing” shall have correlative meanings.

23. “*Asset Purchase Agreement*” means that certain asset purchase agreement dated as of December 18, 2022 by and between BAM Trading Services Inc. (d/b/a Binance.US) as Purchaser and Voyager Digital, LLC as Seller.

24. “*Assumed Liabilities*” has the meaning ascribed to it in the Asset Purchase Agreement.

25. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as now in effect or hereafter amended.

26. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Southern District of New York, or any other court having jurisdiction over the Chapter 11 Cases, including to the extent of the withdrawal of reference under section 157 of the Judicial Code, the United States District Court for the Southern District of New York.

27. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated by the United States Supreme Court under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

28. “*Bar Date*” means the applicable deadline by which Proofs of Claim must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.

29. “*Bar Date Order*” means the *Order (I) Setting Deadlines for Submitting Proofs of Claims, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof* [Docket No. 218].

30. “*Binance.US Platform*” has the meaning ascribed to it in the Asset Purchase Agreement.
31. “*Binance US*” means BAM Trading Services Inc. (d/b/a Binance.US).
32. “*Binance US Account*” means a customer account opened with the Purchaser by an Account Holder or a Holder of an Allowed OpCo General Unsecured Claim.
33. “*Business Day*” means any day, other than a Saturday, Sunday, or a “legal holiday” (as defined in Bankruptcy Rule 9006(a)).
34. “*Cash*” or “\$” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.
35. “*Causes of Action*” mean any action, Claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, Lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law in accordance with applicable law. For the avoidance of doubt, “*Causes of Action*” includes: (a) any right of setoff, counterclaim, or recoupment and any claim arising from any contract or for breach of duties imposed by law or in equity; (b) any claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, violation of local, state, federal, or foreign law, or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any right to object to or otherwise contest Claims or Interests; (d) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (e) any claim or defense, including fraud, mistake, duress, usury, and any other defenses set forth in section 558 of the Bankruptcy Code.
36. “*CCO*” means Evan Psaropoulos.
37. “*CEO*” means Stephen Ehrlich.
38. “*Certificate*” means any instrument evidencing a Claim or an Interest.
39. “*Chapter 11 Cases*” means (a) when used with reference to a particular Debtor, the case pending for that Debtor in the Bankruptcy Court under chapter 11 of the Bankruptcy Code and (b) when used with reference to all Debtors, the procedurally consolidated cases filed for the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.
40. “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.
41. “*Claims Objection Bar Date*” means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) (i) with respect to Administrative Claims (other than Professional Fee Claims and Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code), sixty days after the Administrative Claims Bar Date or (ii) with respect to all other Claims (other than Professional Fee Claims), 180 days after the Effective Date and (b) such other period of limitation as may be specifically fixed by the Debtors or the Wind-Down Debtor, as applicable, as approved by an order of the Bankruptcy Court for objecting to such Claims.

42. “*Claims Register*” means the official register of Claims against and Interests in the Debtors maintained by the Clerk of the Bankruptcy Court or the Claims, Noticing, and Solicitation Agent.

43. “*Claims, Noticing, and Solicitation Agent*” means Bankruptcy Management Solutions, Inc. d/b/a Stretto, in its capacity as the claims, noticing, and solicitation agent in the Chapter 11 Cases for the Debtors and any successors appointed by an order of the Bankruptcy Court.

44. “*Class*” means a class of Claims against or Interests in the Debtors as set forth in Article III of the Plan in accordance with section 1122(a) of the Bankruptcy Code.

45. “*Committee*” means the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases.

46. “*Confirmation*” means the Bankruptcy Court’s entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

47. “*Confirmation Date*” means the date on which Confirmation occurs.

48. “*Confirmation Hearing*” means the hearing before the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code at which the Debtors will seek Confirmation of the Plan.

49. “*Confirmation Order*” has the meaning ascribed to it in the Asset Purchase Agreement.

50. “*Consummation*” means the occurrence of the Effective Date.

51. “*Contributed Third-Party Claims*” means all direct Causes of Action that any Contributing Claimant has against any Person (other than a Debtor) that had a direct relationship with the Debtors, their predecessors, or respective affiliates and that harmed such Contributing Claimant in the claimant’s capacity as a creditor of Voyager, including (a) all Causes of Action based on, arising out of, or related to the marketing, sale, and issuance of Cryptocurrency that at any point was held or offered on Voyager’s platform; (b) all Causes of Action based on, arising out of, or related to the alleged misrepresentation of any of the Debtors’ financial information, business operations, or related internal controls; and (c) all Causes of Action based on, arising out of, or related to any alleged failure to disclose, or actual or attempted cover up or obfuscation of, any of the Debtors’ conduct prior to the Petition Date; *provided, however*, that Contributed Third-Party Claims do not include (i) any derivative claims of the Debtors; (ii) any direct claims against the Released Parties; (iii) any direct Causes of Action that any Contributing Claimant has against Mark Cuban, Dallas Basketball Limited d/b/a Dallas Mavericks, the National Basketball Association, and any of their Related Parties; or (iv) any direct Causes of Action that any Contributing Claimant, in its capacity as an equity holder of Voyager Digital Ltd., has that are asserted in the currently filed complaint, dated as of July 6, 2022, in the Ontario Superior Court of Justice by Francine De Sousa, against Voyager Digital Ltd., Stephen Ehrlich, Philip Eytan, Evan Psaropoulos, Lewis Bateman, Krisztian Toth, Jennifer Ackart, Glenn Stevens, and Brian Brooks.

52. “*Contributing Claimants*” means any Holders of Claims or Interests that elect on their ballots or opt-in forms to contribute their Contributed Third-Party Claims to the Wind-Down Debtor.

53. “*Cryptocurrency*” means a digital currency or crypto asset in which transactions are verified and records maintained by a decentralized system using cryptography, rather than by a

centralized authority, including stablecoins, digital coins and tokens, such as security tokens, utility tokens and governance tokens.

54. “*Cure*” or “*Cure Claim*” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s default under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

55. “*Customer Onboarding Protocol*” means the protocol describing the process of onboarding Account Holders and Holders of OpCo General Unsecured Claims onto the Binance.US Platform, the form of which shall be included in the Plan Supplement and filed no later than by February 8, 2023, and which shall be in a form acceptable to the Purchaser.

56. “*D&O Carriers*” means the insurance carriers of the D&O Liability Insurance Policies.

57. “*D&O Liability Insurance Policies*” means all unexpired insurance policies maintained by the Debtors, the Wind-Down Debtor, or the Estates as of the Effective Date that have been issued (or provide coverage) regarding directors’, managers’, officers’, members’, and trustees’ liability (including any “tail policy”), including but not limited to the Management Liability Policy, the Excess Policies, and the Side-A Policy, and all agreements, documents, or instruments relating thereto.

58. “*D&O Settlement*” means the settlement between the Debtors and CEO and CCO as set forth in Article IV.G of the Plan.

59. “*Debtors*” means, collectively, each of the following: Voyager Digital Holdings, Inc.; Voyager Digital Ltd.; and Voyager Digital, LLC.

60. “*Definitive Documents*” means: (a) the Plan (and any and all exhibits, annexes, and schedules thereto); (b) the Confirmation Order; (c) the Disclosure Statement and the other Solicitation Materials; (d) the Disclosure Statement Order; (e) all pleadings filed by the Debtors in connection with the Chapter 11 Cases (or related orders); (f) the Plan Supplement; (g) the Asset Purchase Agreement; (h) the Customer Onboarding Protocol; and (i) any and all other deeds, agreements, filings, notifications, pleadings, orders, certificates, letters, instruments or other documents reasonably desired or necessary to consummate and document the transactions contemplated by the Restructuring Transactions (including any exhibits, amendments, modifications, or supplements made from time to time thereto).

61. “*Disclosure Statement*” means the *Amended Disclosure Statement Relating to the Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, as may be amended, supplemented, or otherwise modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan.

62. “*Disclosure Statement Order*” means the order entered by the Bankruptcy Court approving the Disclosure Statement.

63. “*Disputed*” means a Claim or an Interest or any portion thereof: (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order; and (c) with respect to which a party in interest has Filed a Proof of Claim, a Proof of Interest, or otherwise made a written request to a Debtor for payment.



64. “*Disputed Claims Reserve*” means an appropriate reserve in an amount to be determined by the Wind-Down Debtor for distributions on account of Disputed Claims that are subsequently Allowed after the Effective Date, in accordance with Article VII.D hereof.

65. “*Distributable Cryptocurrency*” means all Cryptocurrency held on the Voyager platform or that is otherwise property of any Debtor on the Effective Date after payment in full of, or reserve for, all Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims.

66. “*Distributable HoldCo Cash*” means HoldCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at HoldCo in full; and (y) to fund HoldCo’s Pro Rata share of the Wind-Down Budget.

67. “*Distributable OpCo Cash*” means OpCo’s Cash, including the Purchase Price Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at OpCo in full; and (y) to fund OpCo’s Pro Rata share of the Wind-Down Budget.

68. “*Distributable TopCo Cash*” means TopCo’s Cash, less (x) any Cash necessary to satisfy Allowed Administrative Claims, Priority Tax Claims, Secured Tax Claims, and Other Priority Claims at TopCo in full; and (y) to fund TopCo’s Pro Rata share of the Wind-Down Budget.

69. “*Distribution Agent*” means, as applicable, the Purchaser, the Debtors, the Wind-Down Debtor or any Entity or Entities designated by the Purchaser, the Debtors, or the Wind-Down Debtor to make or to facilitate distributions that are to be made pursuant to the Plan, Definitive Documents, and Asset Purchase Agreement.

70. “*Distribution Date*” means, except as otherwise set forth herein, the date or dates determined by the Debtors or the Wind-Down Debtor, on or after the Effective Date, upon which the Distribution Agent shall make distributions to Holders of Allowed Claims or Allowed Interests entitled to receive distributions under the Plan.

71. “*Distribution Record Date*” means the record date for purposes of determining which Holders of Allowed Claims and Interests against the Debtors are eligible to receive distributions under the Plan, which date shall be the Effective Date, or such other date as is determined by the Debtors or designated by an order of the Bankruptcy Court.

72. “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which (a) all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan, (b) no stay of the Confirmation Order is in effect, and (c) the Debtors declare the Plan effective.

73. “*Employee Transition Plan*” has the meaning set forth in Article IV.E of the Plan, and which shall be in form and substance reasonably acceptable to the Committee.

74. “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

75. “*Estate*” means, as to each Debtor, the estate created on the Petition Date for the Debtor in its Chapter 11 Case pursuant to sections 301 and 541 of the Bankruptcy Code and all property (as defined in section 541 of the Bankruptcy Code) acquired by the Debtor after the Petition Date through and including the Effective Date.

78. “*Executory Contract*” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

80. “*Extended Outside Date*” has the meaning set forth in the Asset Purchase Agreement.

82. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing, respectively, in the Chapter 11 Cases with the Bankruptcy Court or its authorized designee, or, with respect to the filing of a Proof of Claim or Proof of Interest, file, filed, or filing, respectively, with the Claims, Noticing, and Solicitation Agent.

84. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, petition for certiorari, or move for a new trial, reargument, reconsideration, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, reargument, reconsideration, or rehearing has been timely taken or filed, or as to which any appeal that has been or may be taken or any petition for certiorari or any motion for a new trial, reargument, reconsideration, or rehearing that has been or may be made or filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the motion for a new trial, reargument, reconsideration, or rehearing shall have been denied, resulted in no modification of such order (if any such motion has been or may be granted), or have otherwise been dismissed with prejudice; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure or any comparable Bankruptcy Rule may be filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

86. “*FTX Bankruptcy Proceeding*” means that certain chapter 11 proceeding captioned *In re FTX Trading Ltd.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Nov. 11, 2022).

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88. “*FTX Recovery*” means the recovery, if any, of the Debtors from FTX on account of the FTX Claims.

89. “*FTX Settlement*” means the settlement between the Debtors, the Committee, FTX, Alameda, and the official committee of unsecured creditors in the FTX Bankruptcy Proceeding, pursuant to the terms set forth in the *Debtors’ Motion for Entry of an Order Approving the Joint Stipulation and Agreed Order Between the Voyager Debtors, the FTX Debtors, and Their Respective Official Committees of Unsecured Creditors* [Docket No. 1106].

90. “*General Unsecured Claim*” means, collectively, any HoldCo General Unsecured Claim, OpCo General Unsecured Claim, or TopCo General Unsecured Claim.

91. “*Governmental Claimant Stipulation*” means the *Joint Stipulation and Agreed Order Between the Debtors and Governmental Claimants* [Docket. No. 1100].

92. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

93. “*Government Bar Date*” means the applicable deadline by which Proofs of Claim by a Governmental Unit must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.

94. “*HoldCo*” means Voyager Digital Holdings, Inc.

95. “*HoldCo General Unsecured Claim*” means any Claim against HoldCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Alameda Loan Facility Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation, against HoldCo are HoldCo General Unsecured Claims.

96. “*Holder*” means an Entity holding a Claim against or an Interest in any Debtor.

97. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

98. “*Insurance Policies*” means any and all insurance policies entered into by the Debtors, including the D&O Insurance Policies.

99. “*Intercompany Claim*” means any Claim held by a Debtor or a Debtor’s Affiliate against a Debtor.

100. “*Intercompany Interest*” means, other than an Interest in Voyager, an Interest in one Debtor held by another Debtor or a Debtor’s Affiliate.

101. “*Interest*” means any equity security (as such term is defined in section 101(16) of the Bankruptcy Code) including all issued, unissued, authorized, or outstanding shares of capital stock and any other common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profit interests of an Entity, including all options, warrants, rights, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable, or exchangeable securities, or other agreements, arrangements, or commitments of any

character relating to, or whose value is related to, any such interest or other ownership interest in an Entity whether or not arising under or in connection with any employment agreement and whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security, and including any Claim against the Debtors subject to subordination pursuant to section 510(b) of the Bankruptcy Code arising from or related to the foregoing.

102. “*Interim Compensation Order*” means the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* [Docket No. 236].

103. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001 and the rules and regulations promulgated thereunder, as applicable to the Chapter 11 Cases.

104. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

105. “*Liquidation Procedures*” means, in the event the Sale Transaction is not consummated by the Outside Date, such procedures filed by the Wind-Down Debtor identifying the mechanics and procedures to effectuate the Liquidation Transaction.

106. “*Liquidation Transaction*” means, in the event the Sale Transaction is not consummated by the Outside Date, the distribution of the Debtors’ Cryptocurrency, Cash and other assets pursuant to Article IV.D of this Plan.

107. “*Management Liability Policy*” means the Executive and Corporate Securities Liability Insurance Policy, No. ELU181214-22, issued by XL Specialty Insurance Company for the February 22, 2022 to February 22, 2023 period.

108. “*Money Transmitter License*” means any consent, license, certificate, franchise, permission, variance, clearance, registration, qualification, authorization, waiver, exemption or other permit issued, granted, given or otherwise made available by or under the authority of any Governmental Unit pursuant to state money transmission or similar laws.

109. “*Net Owed Coins*” has the meaning ascribed to it in the Asset Purchase Agreement.

110. “*Non-Released D&O Claims*” has the meaning set forth in Article IV.F of the Plan.

111. “*Non-Released D&O Claim Budget*” means the amount allocated to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims, which amount shall be agreed upon between the Debtors and the Committee prior to the Confirmation Hearing.

112. “*Non-Released Insurance Claims*” has the meaning set forth in Article IV.F of the Plan.

113. “*OpCo*” means Voyager Digital, LLC.

114. “*OpCo General Unsecured Claim*” means any Claim against OpCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Account Holder Claim; or (h) an Intercompany Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation against OpCo are OpCo General Unsecured Claims.

115. “OSC” means the Ontario Securities Commission.

116. “*Other Priority Claim*” means any Claim against a Debtor, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

117. “*Outside Date*” has the meaning set forth in the Asset Purchase Agreement. All references herein to the “Outside Date” shall be deemed to include the “Extended Outside Date” to the extent the Outside Date is extended in accordance with Section 8.1(c) of the Asset Purchase Agreement.

118. “*Person*” has the meaning set forth in section 101(41) of the Bankruptcy Code.

119. “*Petition Date*” means July 5, 2022.

120. “*Plan*” means this joint chapter 11 plan and all exhibits, supplements, appendices, and schedules hereto, as may be altered, amended, supplemented, or otherwise modified from time to time in accordance with Article X.A hereof, including the Plan Supplement (as altered, amended, supplemented, or otherwise modified from time to time), which is incorporated herein by reference and made part of the Plan as if set forth herein.

121. “*Plan Administrator*” means the Person or Persons selected by the Committee, after consultation with the Debtors, subject to the approval of the Bankruptcy Court and identified in the Plan Supplement, to serve as the administrator(s) of the Wind-Down Debtor, and any successor thereto, appointed pursuant to the Plan Administrator Agreement.

122. “*Plan Administrator Agreement*” means that certain agreement by and among the Debtors, the Committee, the Plan Administrator and the Wind-Down Debtor, which shall be included in the Plan Supplement in a form reasonably acceptable to the Committee.

123. “*Plan Supplement*” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may thereafter be amended, supplemented, or otherwise modified from time to time in accordance with the terms of the Plan, the Bankruptcy Code, the Bankruptcy Rules, and applicable law), to be Filed by the Debtors no later than seven days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court, and additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement. The Plan Supplement may include the following, as applicable: (a) the Schedule of Assumed Executory Contracts and Unexpired Leases; (b) the Schedule of Retained Causes of Action; (c) the Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases; (d) the Customer Onboarding Protocol; (e) the Restructuring Transactions Memorandum; (f) the Plan Administrator Agreement; (g) the Employee Transition Plan; and (h) any additional documents necessary to effectuate or that is contemplated by the Plan, including any compensation program for any of the Debtors’ employees to be established as contemplated in the Plan and the Definitive Documents to facilitate the transfer of Acquired Assets pursuant to the Asset Purchase Agreement and the wind-down of the Debtors’ Estates; *provided* that the Schedule of Retained Causes of Action shall be filed no later than 14 days before the Voting Deadline. The Plan Supplement (and the contents thereof) shall be (x) subject to Purchaser’s consent rights solely to the extent set forth under the Asset Purchase Agreement (and shall otherwise be consistent with the Asset Purchase Agreement) and (y) reasonably acceptable to the Committee.

124. “*Priority Tax Claim*” means any Claim of a Governmental Unit against a Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code.

125. “*Pro Rata*” means the proportion that (i) an Allowed Claim or an Allowed Interest in a particular Class bears to (ii) the aggregate amount of Allowed Claims or Allowed Interests in that Class and, solely with respect to Claims in Classes 3 and 4(a), the proportion that an Allowed Claim in either such Class bears to the aggregate amount of Allowed Claims in Classes 3 and 4(a) in the aggregate, unless otherwise indicated. For purposes of calculating Pro Rata distributions if the Sale Transaction is consummated by the Outside Date, the Pro Rata shares of all Holders of Allowed Claims or Allowed Interests shall be calculated taking into account the Acquired Coins Value of the Net Owed Coins distributed to each of the Account Holders.

126. “*Professional*” means an Entity: (a) employed in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code or (b) for which compensation and reimbursement has been Allowed by Final Order of the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

127. “*Professional Fee Claim*” means any Administrative Claim by a Professional for compensation for services rendered or reimbursement of expenses incurred by such Professional through and including the Effective Date to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court. To the extent the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional’s requested fees and expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

128. “*Professional Fee Escrow Account*” means an escrow account funded by the Debtors with Cash no later than the Effective Date in an amount equal to the Professional Fee Escrow Amount.

129. “*Professional Fee Escrow Amount*” means the aggregate amount of quarterly U.S. Trustee fees, Professional Fee Claims, and other unpaid fees and expenses the Professionals have incurred or will incur in rendering services in connection with the Chapter 11 Cases prior to and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, which shall be estimated pursuant to the method set forth in Article II.B of the Plan.

130. “*Proof of Claim*” means a written proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

131. “*Proof of Interest*” means a written proof of Interest Filed against any of the Debtors in the Chapter 11 Cases.

132. “*Purchase Price Cash*” means the Cash paid by the Purchaser to OpCo pursuant to the Asset Purchase Agreement.

133. “*Purchaser*” means Binance US.

134. “*Reinstated*” or “*Reinstatement*” means, with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

135. “*Related Party*” means, with respect to any Entity, in each case in its capacity as such with respect to such Entity, such Entity’s current and former directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are

held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and advisors.

136. “*Released Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Committee, and each of the members thereof; (c) each of the Released Professionals; (d) Purchaser and each of its Related Parties; and (e) each of the Released Voyager Employees (subject to the limitations contained in Article IV.F and Article IV.G of the Plan); *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Released Parties” under the Plan.

137. “*Released Professionals*” means the following professionals retained by the Debtors, the Committee, or the Purchaser (as applicable): (i) Kirkland & Ellis LLP; (ii) Moelis & Company LLC; (iii) Berkeley Research Group, LLC; (iv) Bankruptcy Management Solutions, Inc. d/b/a Stretto; (v) Quinn Emanuel Urquhart & Sullivan LLP; (vi) Fasken Martineau DuMoulin LLP; (vii) Campbells Legal (BVI); (viii) McDermott Will & Emery LLP; (ix) FTI Consulting, Inc.; (x) Epiq Corporate Restructuring, LLC; (xi) Cassels, Brock & Blackwell LLP; (xii) Paul Hastings LLP; (xiii) Harney Westwood & Riegels LP (BVI); (xiv) Day Pitney LLP (solely in their capacity as counsel to the Debtors); (xv) Jenner & Block LLP; (xvi) Seyfarth Shaw LLP; (xvii) Alvarez & Marsal Canada Inc.; (xviii) Blake, Cassels & Graydon LLP; (xix) Jaffe Raitt Heuer & Weiss; (xx) Latham & Watkins LLP; (xxi) Lowenstein Sandler LLP; (xxii) Kramer Levin LLP; and (xxiii) Acura Law Firm; *provided* that if the Asset Purchase Agreement is terminated, Latham & Watkins LLP shall not be a “Released Professional” under the Plan.

138. “*Released Voyager Employees*” means all directors, officers, and Persons employed by each of the Debtors and their Affiliates serving in such capacity on or after the Petition Date but before the Effective Date (subject to the limitations contained in Article IV.F and Article IV.G of the Plan).

139. “*Releasing Parties*” means, collectively, in each case in its capacity as such: (a) the Debtors; (b) the Committee, and each of the members thereof; (c) each of the Released Professionals; (d) each of the Released Voyager Employees; (e) Purchaser and each of its Related Parties to the extent Purchaser is able to bind such Related Parties; (f) all Holders of Claims that vote to accept the Plan and affirmatively opt into the releases provided by the Plan; (g) all Holders of Claims that vote to reject the Plan and affirmatively opt into the releases provided by the Plan; and (h) all Holders of Claims or Interests that abstain from voting (or are otherwise not entitled to vote) on the Plan and affirmatively opt into the releases provided by the Plan; *provided* that if the Asset Purchase Agreement is terminated, Purchaser and each of its Related Parties shall not be “Releasing Parties” under the Plan.

140. “*Restructuring Transactions*” means those mergers, amalgamations, consolidations, reorganizations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions, or other corporate transactions that the Debtors and the Committee jointly determine to be necessary to implement the transactions described in this Plan, as described in more detail in Article IV.B herein and the Restructuring Transactions Memorandum.

141. “*Restructuring Transactions Memorandum*” means that certain memorandum as may be amended, supplemented, or otherwise modified from time to time, describing the steps to be carried out to effectuate the Restructuring Transactions, the form of which shall be included in the Plan Supplement, and which shall be in a form reasonably acceptable to the Committee.



142. “*Robertson Class Action*” means that certain putative class action litigation filed in the United States District Court for the Southern District of Florida, captioned *Robertson, et al. v. Cuban, et al.*, No. 1:22-cv-22538-RKA (S.D. Fla. Aug. 10, 2022).

143. “*Sale Transaction*” means the sale of certain of the Debtors’ assets and all other transactions pursuant to the Asset Purchase Agreement.

144. “*Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance acceptable to the Purchaser and in all respects consistent with the terms of the Asset Purchase Agreement, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors and assigned to the Purchaser pursuant to the Plan and Asset Purchase Agreement, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Debtor, as applicable, in accordance with the Plan.

145. “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means a schedule that may be Filed as part of the Plan Supplement, which shall be in form and substance reasonably acceptable to the Committee, of certain Executory Contracts and Unexpired Leases to be assumed by the Debtors pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors or Wind-Down Debtor, as applicable, in accordance with the Plan.

146. “*Schedule of Retained Causes of Action*” means the schedule of certain Causes of Action of the Debtors that are not released, waived, settled, compromised, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors and/or the Wind-Down Debtor, which shall be included in the Plan Supplement. For the avoidance of doubt, any failure to specifically list any Causes of Action on the Schedule of Retained Causes of Action shall not be deemed a waiver or admission that any such Cause of Action does not constitute Vested Causes of Action.

147. “*Schedules*” means, collectively, the schedules of assets and liabilities, Schedule of Assumed Executory Contracts and Unexpired Leases, Schedule of Assumed and Assigned Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by each of the Debtors pursuant to section 521 of the Bankruptcy Code, as such schedules and statements may have been or may be amended, modified, or supplemented from time to time.

148. “*SEC*” means the United States Securities and Exchange Commission.

149. “*Section 510(b) Claim*” means any Claim against a Debtor subject to subordination under section 510(b) of the Bankruptcy Code.

150. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a secured Claim.

151. “*Secured Tax Claim*” means any Secured Claim against a Debtor that, absent its Secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

152. “*Securities Act*” means the U.S. Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

153. “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act.

154. “*Side-A Policy*” means the Cornerstone A-Side Management Liability Policy, ELU184179-22, issued by XL Specialty Insurance Company, for the July 1, 2022 to July 1, 2023 period.

155. “*Solicitation Materials*” means all solicitation materials with respect to the Plan.

156. “*Special Committee*” means the special committee established at OpCo, comprised of two independent directors, to conduct the Special Committee Investigation.

157. “*Special Committee Investigation*” means that certain investigation undertaken by the Special Committee into certain historical transactions, as more fully described in the Disclosure Statement.

158. “*Supported Jurisdiction*” has the meaning ascribed to it in the Asset Purchase Agreement.

159. “*TopCo*” means Voyager Digital Ltd., a Canadian corporation that is publicly traded on the Toronto Stock Exchange.

160. “*TopCo General Unsecured Claim*” means any Claim against TopCo that is not Secured and is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) a Secured Tax Claim; (d) a Priority Tax Claim; (e) an Other Priority Claim; (f) a Professional Fee Claim; (g) an Alameda Loan Facility Claim; (h) an Intercompany Claim; or (i) a Section 510(b) Claim. For the avoidance of doubt, all (i) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (ii) Claims that are not Secured resulting from litigation, other than 510(b) Claims, against TopCo are TopCo General Unsecured Claims.

161. “*Transferred Creditors*” means Account Holders and Holders of Allowed OpCo General Unsecured Claims who have completed all documentation and “KYC” processes reasonably required by Purchaser in the ordinary course of Purchaser’s business with respect to similarly situated clients and who have opened a Binance US Account as of the date that is three (3) months following the later of the Closing Date (as defined in the Asset Purchase Agreement) or such later date as may be specified in the Customer Onboarding Protocol, and the successors and assigns of such Holders.

162. “*Transferred Cryptocurrency Value*” means the aggregate VWAP of any Cryptocurrency that is the subject of an Additional Bankruptcy Distribution as of the date that is two Business Days prior to such Additional Bankruptcy Distribution.

163. “*U.S. Trustee*” means the Office of the United States Trustee for Region 2.

164. “*Unclaimed Distribution*” means any distribution under the Plan on account of an Allowed Claim or Allowed Interest to a Holder that, after the expiration of six months after the Effective Date, has not: (a) accepted a distribution, (b) given notice to the Wind-Down Debtor of an intent to accept a particular distribution, (c) responded to the Debtors’ or Wind-Down Debtor’s requests for



information necessary to facilitate a particular distribution, or (d) taken any other action necessary to facilitate such distribution.

165. “*Unexpired Lease*” means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or section 1123 of the Bankruptcy Code.

166. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

167. “*Unsupported Jurisdiction*” has the meaning ascribed to it in the Asset Purchase Agreement.

168. “*Unsupported Jurisdiction Approval*” has the meaning ascribed to it in the Asset Purchase Agreement.

169. “*Vested Causes of Action*” means the Causes of Action vesting in the Wind-Down Debtor pursuant to Article IV.L of the Plan, including, but not limited to, those Causes of Action enumerated on the Schedule of Retained Causes of Action, which shall be included in the Plan Supplement and in all respects consistent with the terms of the Asset Purchase Agreement.

170. “*VGX*” means Voyager Token, that certain Cryptocurrency issued by the Debtors.

171. “*Voting Deadline*” means February 22, 2023.

172. “*Voyager*” means Voyager Digital Ltd. and its direct and indirect Affiliates.

173. “*VWAP*” means, with respect to any type of Cryptocurrency and as of any date of determination, an amount equal to the volume weighted average price in U.S. dollars for such type of Cryptocurrency for the consecutive 24-hour period immediately prior to 8:00 a.m. New York Time on such date of determination, as reported on <https://coinmarketcap.com>.

174. “*Wind-Down Debtor*” means a Debtor, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date, and as described in Article IV.H to, among other things, effectuate the wind-down of the Debtors and the Wind-Down Debtor, commence, litigate and settle the Vested Causes of Action that are not released, waived, settled, compromised, or transferred under the Plan and make distributions pursuant to the terms of the Plan and the Plan Administrator Agreement; *provided* that, for the avoidance of doubt, the Wind-Down Debtor shall not conduct any business operations or continue the Debtors’ business operations after the Effective Date.

175. “*Wind-Down Debtor Assets*” means any assets of the Debtors transferred to, and vesting in, the Wind-Down Debtor pursuant to the Plan Administrator Agreement, which, in the event the Sale Transaction is consummated, shall exclude the Acquired Assets, and which shall include, without limitation but only to the extent the following are not Acquired Assets, (a) the Wind-Down Reserve, (b) the Net-Owed Coins to be distributed to Account Holders in Supported Jurisdictions until such Account Holders complete the Purchaser’s onboarding requirements in accordance with the Asset Purchase Agreement, (c) the Net-Owed Coins to be distributed to Account Holders in Unsupported Jurisdictions to the extent the Purchaser has not obtained the applicable Unsupported Jurisdiction Approval in accordance with Section 6.12 of the Asset Purchase Agreement, (d) any distributions to Account Holders or Holders of OpCo General Unsecured Claims that are returned to the Wind-Down

Debtor pursuant to Section 6.12(e) of the Asset Purchase Agreement, (e) 3AC Claims and 3AC Recovery, (f) FTX Claims and FTX Recovery, (g) Alameda Claims and Alameda Recovery, (h) the Non-Released D&O Claims, and (i) the Vested Causes of Action.

176. “*Wind-Down Debtor Beneficiaries*” means the Holders of Allowed Claims or Allowed Interests that are entitled to receive distributions pursuant to the terms of the Plan, whether or not such Claims or Interests are Allowed as of the Effective Date.

177. “*Wind-Down Debtor Expenses*” means all actual and necessary costs and expenses incurred by the Wind-Down Debtor or Plan Administrator in connection with carrying out the obligations of the Wind-Down Debtor pursuant to the terms of the Plan and the Plan Administrator Agreement.

178. “*Wind-Down Debtor Oversight Committee*” means the oversight committee tasked with overseeing the Wind-Down Debtor in accordance with the Plan and the Plan Administrator Agreement.

179. “*Wind-Down Budget*” means the budget to fund the Wind-Down Debtor, which will be included in the Plan Supplement.

180. “*Wind-Down Reserve*” means the amount set forth in the Wind-Down Budget to fund the Wind-Down Debtor.

## **B. Rules of Interpretation**

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; (2) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form; (3) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (4) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed, shall mean that document, schedule, or exhibit, as it may thereafter have been or may thereafter be validly amended, amended and restated, supplemented, or otherwise modified; (5) unless otherwise specified, any reference to an Entity as a Holder of a Claim or Interest, includes that Entity’s successors and assigns; (6) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (7) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (8) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (12) references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (13) unless otherwise specified, all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases; (14) any effectuating provisions may be interpreted by the Debtors or the Wind-Down Debtor in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; (15) any references herein to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter; (16) all

references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; (17) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable state limited liability company laws; and (18) the use of “include” or “including” is without limitation unless otherwise stated.

### **C. Computation of Time**

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

### **D. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan and any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, documents, instruments, or contracts, in which case the governing law of such agreement shall control); *provided* that corporate, limited liability company, or partnership governance matters relating to the Debtors or the Wind-Down Debtor, as applicable, shall be governed by the laws of the jurisdiction of incorporation or formation of the relevant Debtor or Wind-Down Debtor, as applicable.

### **E. Reference to Monetary Figures**

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

### **F. Reference to the Debtors or the Wind-Down Debtor**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Wind-Down Debtor mean the Debtors and the Wind-Down Debtor, as applicable, to the extent the context requires.

### **G. Nonconsolidated Plan**

Although for purposes of administrative convenience and efficiency the Plan has been filed as a joint plan for each of the Debtors and presents together Classes of Claims against and Interests in the Debtors, the Plan does not provide for the substantive consolidation of any of the Debtors.

## **ARTICLE II.**

### **ADMINISTRATIVE AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

## **A. Administrative Claims**

Except as otherwise provided in this Article II.A and except with respect to Administrative Claims that are Professional Fee Claims or subject to 11 U.S.C. § 503(b)(1)(D), unless previously Filed, requests for payment of Allowed Administrative Claims (other than Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code) must be Filed and served on the Wind-Down Debtor pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such Administrative Claims shall be deemed satisfied as of the Effective Date without the need for any objection from the Wind-Down Debtor or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity. Objections to such requests, if any, must be Filed and served on the Wind-Down Debtor and the requesting party by the Claims Objection Bar Date for Administrative Claims. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order of the Bankruptcy Court.

Except with respect to Administrative Claims that are Professional Fee Claims, and except to the extent that an Administrative Claim or Priority Tax Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Claim and the applicable Debtor(s) agree to less favorable treatment, each Holder of an Allowed Administrative Claim shall receive an amount of Cash equal to the amount of the unpaid or unsatisfied portion of such Allowed Administrative Claim in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Effective Date, no later than thirty (30) days after the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Wind-Down Debtor, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court. Any Cryptocurrency inadvertently deposited to the Debtors' account(s) after the Petition Date shall be returned to the sender in full.

Objections to requests for payment of such Administrative Claims, if any, must be Filed with the Bankruptcy Court and served on the Wind-Down Debtor and the requesting Holder no later than the Claims Objection Bar Date for Administrative Claims. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, an order that becomes a Final Order of the Bankruptcy Court.

## **B. Professional Fee Claims**

### **1. Final Fee Applications and Payment of Professional Fee Claims**

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than sixty (60)

days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules. The Wind-Down Debtor shall pay Professional Fee Claims in Cash to such Professionals in the amount the Bankruptcy Court allows, including from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by entry of an order of the Bankruptcy Court; *provided* that the Debtors' and the Wind-Down Debtor's obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account.

2. Professional Fee Escrow Account

No later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and the U.S. Trustee and for no other Entities until all quarterly U.S. Trustee fees and all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the U.S. Trustee or to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. No funds held in the Professional Fee Escrow Account shall be property of the Estates of the Debtors or the Wind-Down Debtor. When all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court, and all U.S. Trustee quarterly fees plus statutory interest, if any, have been paid in full, any remaining funds held in the Professional Fee Escrow Account shall be turned over to the Wind-Down Debtor without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

3. Professional Fee Escrow Amount

The Professionals shall deliver to the Debtors a reasonable and good-faith estimate of their unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Confirmation Date projected to be outstanding as of the anticipated Effective Date, and shall deliver such estimate no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Fee Claims Filed with the Bankruptcy Court, and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The total aggregate amount so estimated to be outstanding as of the anticipated Effective Date shall be utilized by the Debtors to determine the amount to be funded to the Professional Fee Escrow Account; *provided* that the Wind-Down Debtor shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

4. Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors and/or the Wind-Down Debtor, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Wind-Down Debtor. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy

Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtor may employ and pay any Professional in the ordinary course of business for the period after the Confirmation Date without any further notice to or action, order, or approval of the Bankruptcy Court.

For the avoidance of doubt, no Administrative Claims, Professional Fee Claims, or any other post-confirmation fees and expenses shall be paid prior to payment of any quarterly fees due and outstanding to the U.S. Trustee.

**C. Priority Tax Claims**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release, and in exchange for, each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

**ARTICLE III.**

**CLASSIFICATION, TREATMENT,  
AND VOTING OF CLAIMS AND INTERESTS**

**A. Classification of Claims and Interests**

Except for the Claims addressed in Article II of the Plan, all Claims against and Interests in the Debtors are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions pursuant to the Plan and in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

**B. Summary of Classification**



A summary of the classification of Claims against and Interests in each Debtor pursuant to the Plan is set forth in the following chart. The Plan constitutes a separate chapter 11 plan for each of the Debtors, and accordingly, the classification of Claims and Interests set forth below applies separately to each of the Debtors. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes, and such Claims or Interests shall be treated as set forth in Article III.E hereof. Voting tabulations for recording acceptances or rejections of the Plan will be conducted on a Debtor-by-Debtor basis as set forth above.<sup>1</sup>

<b>Classes</b>	<b>Claim or Interest</b>	<b>Status</b>	<b>Voting Rights</b>
1	Secured Tax Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3	Account Holder Claims	Impaired	Entitled to Vote
4A	OpCo General Unsecured Claims	Impaired	Entitled to Vote
4B	HoldCo General Unsecured Claims	Impaired	Entitled to Vote
4C	TopCo General Unsecured Claims	Impaired	Entitled to Vote
5	Alameda Loan Facility Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
6	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
8	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept)
9	Existing Equity Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

### **C. Treatment of Classes of Claims and Interests**

Subject to Article VI hereof, each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in exchange for such Holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors or Wind-Down Debtor, as applicable, and the Holder of such Allowed Claim or Allowed Interest, as

<sup>1</sup> The Debtors reserve the right to separately classify Claims or Interests to the extent necessary to comply with any requirements under the Bankruptcy Code or applicable law.



applicable. In no event shall any Holder of a Claim receive more than such Holder's Allowed amount on account of such Claim.

1. Class 1 — Secured Tax Claims

- (a) *Classification:* Class 1 consists of all Secured Tax Claims.
- (b) *Treatment:* Each Holder of an Allowed Secured Tax Claim shall receive, in full and final satisfaction of such Allowed Secured Tax Claim, at the option of the Wind-Down Debtor, payment in full in Cash of such Holder's Allowed Secured Tax Claim or such other treatment rendering such Holder's Allowed Secured Tax Claim Unimpaired.
- (c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Allowed Secured Tax Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Secured Tax Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 — Other Priority Claims

- (a) *Classification:* Class 2 consists of all Other Priority Claims.
- (b) *Treatment:* Each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction of such Allowed Other Priority Claim, at the option of the applicable Debtor, payment in full in Cash of such Holder's Allowed Other Priority Claim or such other treatment rendering such Holder's Allowed Other Priority Claim Unimpaired.
- (c) *Voting:* Class 2 is Unimpaired under the Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 — Account Holder Claims

- (a) *Classification:* Class 3 consists of all Account Holder Claims.
- (b) *Allowance:* Account Holder Claims shall be conclusively Allowed in the amount listed on OpCos's *Amended Schedules of Assets and Liabilities* (Case No. 22-10945) [Docket No. 18]; *provided* that the rights of any Holder of an Account Holder Claim to object to the scheduled amount shall be preserved. To the extent an Account Holder Claim is Allowed in a greater amount than the scheduled amount of such Account Holder Claim, such Holder shall be entitled to a subsequent distribution such that it will receive its Pro Rata share of recoveries to Holders of Allowed Account Holder Claims. Account Holder Claims shall be valued in U.S. dollars as of the Petition Date consistent with section 502(b) of the Bankruptcy Code.
- (c) *Treatment:* Each Holder of an Allowed Account Holder Claim will receive in exchange for such Allowed Account Holder Claim:

(i) If the Sale Transaction is consummated by the Outside Date:

- A. its Net Owed Coins, as provided in and subject to the requirements of Sections 6.10 and 6.12 of the Asset Purchase Agreement and Article VI.C.8 of the Plan; *provided* that (i) for Account Holders in Supported Jurisdictions who do not complete the Purchaser's onboarding requirements within three (3) months following the Closing Date ~~and~~, (ii) Account Holders in Unsupported Jurisdictions ~~and~~ who make a written election, in accordance with a notice to be issued by the Debtors and within three (3) months following the later of the Closing Date or the date which the terms and conditions for the Binance.US Platform are made available to such Account Holders to accept, to receive value in Cash on account of the Net Owed Coins allocable to such Account Holders, and (iii) Account Holders in Unsupported Jurisdictions who do not make the election in the prior clause only to the extent that the Purchaser does not obtain the Unsupported Jurisdiction Approval for the jurisdiction in which such Account Holder resides within 6 months following the Closing Date (as defined in the Asset Purchase Agreement), such Account Holders shall receive, after expiration of such applicable time period (i.e., (a) three (3) months following the Closing Date for the Account Holders described in subsection (i) of this paragraph, (b) three (3) months following the later of the Closing Date or the date which the terms and conditions for the Binance.US Platform are made available to such Account Holder to accept for the Account Holders described in subsection (ii) of this paragraph, and (c) six (6) months for the Account Holders described in subsection (iii) of this paragraph), value in Cash at which such Net Owed Coins allocable to such Account Holder are liquidated;
- B. its Pro Rata share of any Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;
- C. its Pro Rata share of Distributable OpCo Cash; and
- D. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at OpCo;

*provided* that distributions made to any Account Holder pursuant to clauses (B), (C), and (D) above shall be made after taking into account

the Acquired Coins Value of the Net Owed Coins or the value in Cash at which such Net Owed Coins are liquidated, as applicable, previously allocated to such Account Holder; or

(ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:

- A. its Pro Rata share of Distributable OpCo Cash;
- B. its Pro Rata share of Distributable Cryptocurrency, which such Account Holder shall be able to withdraw in kind, alternative Cryptocurrency, and/or Cash for a period of thirty (30) days after the Effective Date through the Voyager platform or, if elected by Seller pursuant to Section 6.12(d) of the Asset Purchase Agreement, through the Binance.US Platform; *provided* that if the applicable transfer is made through the Voyager platform and such Account Holder does not withdraw its Pro Rata share of Distributable Cryptocurrency available to such Account Holder from the Voyager platform within such thirty (30) day period, such Account Holder will receive Cash in the equivalent value to its Pro Rata share of Distributable Cryptocurrency; and
- C. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at OpCo.

(d) *Voting:* Class 3 is Impaired under the Plan. Holders of Allowed Account Holder Claims are entitled to vote to accept or reject the Plan.

#### 4. Class 4A — OpCo General Unsecured Claims

- (a) *Classification:* Class 4A consists of all OpCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed OpCo General Unsecured Claim will receive in exchange for such Allowed OpCo General Unsecured Claim:
  - (i) If the Sale Transaction is consummated by the Outside Date:
    - A. its Pro Rata share of Distributable Cryptocurrency in Cash;
    - B. its Pro Rata share of Additional Bankruptcy Distributions, in Cryptocurrency or Cash as provided in and subject to the requirements of Sections 6.12 and 6.14 of the Asset Purchase Agreement;

- C. its Pro Rata share of Distributable OpCo Cash; and
    - D. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at OpCo; or
  - (ii) If the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated:
    - A. its Pro Rata share of Distributable Cryptocurrency in Cash;
    - A. its Pro Rata share of Distributable OpCo Cash; and
    - B. to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to OpCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to OpCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at OpCo.
  - (c) *Voting:* Class 4A is Impaired under the Plan. Holders of Allowed OpCo General Unsecured Claims are entitled to vote to accept or reject the Plan.
- 5. Class 4B — HoldCo General Unsecured Claims
  - (a) *Classification:* Class 4B consists of all HoldCo General Unsecured Claims.
  - (b) *Treatment:* Each Holder of an Allowed HoldCo General Unsecured Claim will receive in exchange for such Allowed HoldCo General Unsecured Claim:
    - (i) its Pro Rata share of Distributable HoldCo Cash; and
    - (ii) to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to HoldCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to HoldCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at HoldCo.

- (c) *Voting:* Class 4B is Impaired under the Plan. Holders of Allowed HoldCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

6. Class 4C — TopCo General Unsecured Claims

- (a) *Classification:* Class 4C consists of all TopCo General Unsecured Claims.
- (b) *Treatment:* Each Holder of an Allowed TopCo General Unsecured Claim will receive in exchange for such Allowed TopCo General Unsecured Claim:
  - (i) its Pro Rata share of Distributable TopCo Cash; and
  - (ii) to effectuate distributions from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to TopCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable at TopCo shall only be made following payment in full of, or reserve for, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims at TopCo.
- (c) *Voting:* Class 4C is Impaired under the Plan. Holders of Allowed TopCo General Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 5 — Alameda Loan Facility Claims

- (a) *Classification:* Class 5 consists of all Alameda Loan Facility Claims.
- (b) *Treatment:* If the FTX Settlement becomes effective, each Holder of an Allowed Alameda Loan Facility Claim shall, at the election of the Debtors with the consent of the Committee, in their sole discretion, following written notice to counsel to FTX, Alameda and to the official committee of unsecured creditors in the FTX Bankruptcy Proceeding of such election, which written notice shall be given no later than the date that is thirty (30) days after the Confirmation Hearing, (a) withdraw its Alameda Loan Facility Claims in their entirety, with prejudice to FTX or any other party reasserting such claims, or (b) contribute the Alameda Loan Facility Claims to OpCo. If the FTX Settlement does not become effective, the Alameda Loan Facility Claims shall be subordinated to all Allowed Claims at OpCo, HoldCo, and TopCo, including, but not limited to, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, Allowed Account Holder Claims, Allowed OpCo General Unsecured Claims, Allowed HoldCo General Unsecured Claims, and Allowed TopCo General Unsecured Claims; *provided, however*, if the Bankruptcy Court denies subordination of the Alameda Loan Facility Claims, then such Alameda Loan Facility Claims shall be *pari passu* with General Unsecured Claims at the applicable Debtor entity.
- (c) *Voting:* Class 5 is Impaired under the Plan. Holders of Allowed Alameda Loan Facility Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Allowed Alameda Loan Facility Claims are not entitled to vote to accept or reject the Plan.

8. Class 6 — Section 510(b) Claims

- (a) *Classification:* Class 6 consists of all Section 510(b) Claims against TopCo.
- (b) *Allowance:* Notwithstanding anything to the contrary herein, a Section 510(b) Claim against TopCo, if any such Section 510(b) Claim exists, may only become Allowed by Final Order of the Bankruptcy Court.
- (c) *Treatment:* Each Holder of Allowed Section 510(b) Claims against TopCo will receive, to effectuate distributions, if applicable, from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to TopCo; *provided* that any distributions on account of the Wind-Down Debtor Assets attributable to TopCo shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims at TopCo.
- (d) *Voting:* Class 6 is Impaired under the Plan. Holders (if any) of Allowed Section 510(b) Claims against TopCo are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders (if any) of Allowed Section 510(b) Claims against TopCo are not entitled to vote to accept or reject the Plan.

9. Class 7 — Intercompany Claims

- (a) *Classification:* Class 7 consists of all Intercompany Claims.
- (b) *Treatment:* Each Intercompany Claim shall receive the treatment for such Intercompany Claim as determined by the Bankruptcy Court.
- (c) *Voting:* Holders of Intercompany Claims are either Unimpaired or Impaired, and such Holders of Intercompany Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

10. Class 8 — Intercompany Interests

- (a) *Classification:* Class 8 consists of all Intercompany Interests.
- (b) *Treatment:* On the Effective Date, all Intercompany Interests shall be, at the option of the Debtors, either (a) Reinstated in accordance with Article III.G of the Plan or (b) set off, settled, addressed, distributed, contributed, merged, or cancelled, in each case in accordance with the Restructuring Transactions Memorandum.
- (c) *Voting:* Holders of Intercompany Interests are either Unimpaired or Impaired, and such Holders of Intercompany Interests are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.



11. Class 9 — Existing Equity Interests

- (a) *Classification:* Class 9 consists of all Existing Equity Interests.
- (b) *Treatment:* Each Holder of Existing Equity Interests will receive, to effectuate distributions, if applicable, from the Wind-Down Debtor, its Pro Rata share of the Wind-Down Debtor Assets attributable to TopCo; *provided* that any distributions on account of Wind-Down Debtor Assets attributable at TopCo shall only be made following payment in full of, or reserve for, all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, Allowed Other Priority Claims, and Allowed TopCo General Unsecured Claims at TopCo.
- (c) *Voting:* Class 9 is Impaired under the Plan. Holders of Existing Equity Interests are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan.

**D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Wind-Down Debtor's rights in respect of any Unimpaired Claim, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

**E. Elimination of Vacant Classes; Presumed Acceptance by Non-Voting Classes**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**F. Subordinated Claims**

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims against and Allowed Interests in the Debtors and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors and the Wind-Down Debtor reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**G. Intercompany Interests**

To the extent Reinstated under the Plan, distributions (if any) on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience and due to the importance of maintaining the corporate structure given the existing intercompany systems connecting the Debtors and



their Affiliates, and in exchange for the Debtors' and Wind-Down Debtor's agreement under the Plan to make certain distributions to the Holders of Allowed Claims.

#### **H. Controversy Concerning Impairment**

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

#### **I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code is satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims or Interests. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

### **ARTICLE IV.**

#### **PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

##### **A. General Settlement of Claims and Interests**

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 of all such Claims, Interests, Causes of Action, and controversies, as well as a finding by the Bankruptcy Court that such compromise and settlement is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

##### **B. Restructuring Transactions**

On or before the Effective Date, the applicable Debtors will take any action as may be necessary or advisable to effectuate the Restructuring Transactions described in the Plan, the Restructuring Transactions Memorandum, and the Customer Onboarding Protocol, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (3) the filing of appropriate

certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (4) the transfer or distribution of any Cryptocurrency or Cash pursuant to the Asset Purchase Agreement, or the Liquidation Procedures, as applicable; (5) the execution and delivery of the Plan Administrator Agreement; (6) any transactions necessary or appropriate to form or convert into the Wind-Down Debtor; (7) such other transactions that are required to effectuate the Restructuring Transactions, including any sales, mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (8) all transactions necessary to provide for the purchase of the Acquired Assets by Purchaser under the Asset Purchase Agreement; and (9) all other actions that the applicable Entities determine to be necessary or appropriate, or that are reasonably requested by the Purchaser in accordance with the Asset Purchase Agreement, including making filings or recordings that may be required by applicable law.

The Confirmation Order shall, and shall be deemed to, pursuant to sections 1123 and 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Restructuring Transactions.

### **C. The Sale Transaction**

If the Sale Transaction is consummated by the Outside Date, pursuant to the terms of the Asset Purchase Agreement, then the following terms shall govern:

On or prior to the Effective Date, the Debtors shall have consummated the Sale Transaction, and, among other things, the Acquired Assets and Assumed Liabilities shall have transferred to the Purchaser free and clear of all Liens, Claims, Interests, charges, or other encumbrances, and the Purchaser shall pay to the Debtors or Holders of Account Holder Claims and Holders of OpCo General Unsecured Claims, as applicable, the proceeds from the Sale Transaction, as and to the extent provided for in the Asset Purchase Agreement, and this Plan. The Confirmation Order shall authorize the Debtors, the Purchaser, and the Wind-Down Debtor, as applicable, to undertake the transactions contemplated by the Asset Purchase Agreement, including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code.

The Debtors and Purchaser shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Sale Transaction pursuant to the terms of the Asset Purchase Agreement the Customer Onboarding Protocol, and this Plan. The Debtors shall be authorized to sell any Cryptocurrency to satisfy all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Tax Claims, and Allowed Other Priority Claims. On and after the Effective Date, except as otherwise provided in the Plan and the Plan Administrator Agreement, the Wind-Down Debtor, or the Purchaser, as applicable, may operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

Notwithstanding anything to the contrary in the Asset Purchase Agreement, this Plan, or any Definitive Document, the Debtors, each Account Holder or Holder of an Allowed OpCo General Unsecured Claim, as applicable, shall retain all right, title, and interest in and to any Cryptocurrency allocated to such Account Holder or Holder of an Allowed OpCo General Unsecured Claim pursuant to this Plan through and including such time as such Cryptocurrency is returned or distributed to the Debtors or such Account Holder or Holder of an Allowed OpCo General Unsecured Claim, as applicable, hereunder, and such Cryptocurrency shall be held by Purchaser solely in a custodial capacity in trust and

solely for the benefit of the Debtors or Account Holder or Holder of an Allowed OpCo General Unsecured Claim, as applicable, thereafter.

Notwithstanding anything contained in this Plan and any Definitive Documents, if the Sale Transaction is not consummated by the Outside Date or the Asset Purchase Agreement is terminated, all provisions contained in this Plan and the Definitive Documents governing the Sale Transaction shall have no further force and effect, and the provisions governing the Liquidation Transaction shall govern. The rights and remedies of the Seller and Purchaser under the Asset Purchase Agreement and any related orders of the Bankruptcy Court shall be expressly preserved.

#### **D. The Liquidation Transaction**

If the Sale Transaction is not consummated by the Outside Date, pursuant to the Asset Purchase Agreement, then the following terms shall govern:

##### *1. The Liquidation Transaction*

On or after the Outside Date, the Debtors will pursue the Liquidation Transaction in accordance with the Liquidation Procedures. Pursuant to the Liquidation Transaction, the Debtors, the Wind-Down Debtor, or the Plan Administrator, as applicable, will distribute certain of the Cryptocurrency in-kind to Holders of Account Holder Claims in accordance with Article III.C of the Plan, transfer all Wind-Down Debtor Assets to the Wind-Down Debtor, liquidate certain of the Cryptocurrency, distribute Cash to Holders of Claims, wind down and dissolve the Debtors, and pursue final administration of the Debtors' Estates pursuant to the Bankruptcy Code.

The Debtors, or the Wind-Down Debtor, as applicable, shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Liquidation Transaction pursuant to this Plan. On or before the date that is twenty-one days prior to the anticipated commencement of the Liquidation Transaction, the Debtors, or the Wind-Down Debtor, as applicable, shall file the Liquidation Procedures with the Bankruptcy Court. Parties in interest shall have ten days to object to the Liquidation Procedures, and if no objections are timely filed, the Liquidation Procedures shall be approved. In the event of a timely objection, the Bankruptcy Court shall adjudicate any objection to the Liquidation Procedures.

On and after the Effective Date, except as otherwise provided in the Plan, the Plan Administrator Agreement, and the Liquidation Procedures, the Debtors or the Wind-Down Debtor, as applicable, may operate their businesses and may use, acquire or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; provided, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

##### *2. Cryptocurrency Rebalancing*

Prior to the Effective Date the Debtors shall, in consultation with the Committee, be authorized to rebalance their Cryptocurrency portfolio to ensure that the Debtors can effectuate *pro rata* in-kind distributions of the Distributable Cryptocurrency according to Article III.C.3(c) of this Plan, *provided* that such rebalancing shall be in accordance with the Asset Purchase Agreement (if the Asset Purchase Agreement has not been terminated). The Debtors may effectuate such rebalancing by (i) selling such Cryptocurrency that cannot be distributed to Account Holders, (ii) purchasing Cryptocurrency supported by Voyager's or ~~Purchaser's~~ [Binance.US](https://www.binance.us/) platform (as provided by the Asset Purchase Agreement) that

shall be distributed to Account Holders, and (iii) engaging in any other transaction, including the execution of trades of Cryptocurrency, necessary or appropriate to effectuate distributions of the Distributable Cryptocurrency to Holders of Allowed Account Holder Claims.

#### **E. Employee Transition Plan**

The Debtors shall be authorized to implement the Employee Transition Plan, the terms of which shall be reasonably acceptable to Purchaser and the Committee and included in the Plan Supplement. The Employee Transition Plan shall help ensure that employees are available to provide transition services to the Debtors and/or the Wind-Down Debtor to effectuate the Sale Transaction and to wind down the Debtors' Estates.

#### **F. Non-Released D&O Claims**

Any Claims or Causes of Action held by the Debtors or their respective estates against the Debtors' CEO and/or CCO (regardless of any fiduciary capacity in which such individuals were acting) that are expressly related to approval of the 3AC Loan are not released pursuant to the Plan (collectively, the "Non-Released D&O Claims"), and shall be assigned and transferred to the Wind-Down Debtor to be pursued, settled, or resolved by the Wind-Down Debtor in accordance with the terms of Article IV.G of this Plan and subject to the Wind-Down Budget. Any claims against the D&O Carriers that the Debtors' insurance transactions within the 90 days prior to the Petition Date are avoidable under the Bankruptcy Code, applicable state law, or both (the "Non-Released Insurance Claims") shall be assigned and transferred to the Wind-Down Debtor to be pursued, settled, or resolved solely by the Wind-Down Debtor in accordance with the terms of Article IV.G of this Plan. The Wind-Down Debtor shall be a successor to the Debtors' rights, title, and interest in any Non-Released D&O Claims and Non-Released Insurance Claims, and the Wind-Down Debtor shall have standing to pursue the Non-Released D&O Claims and the Non-Released Insurance Claims in accordance with the terms of Article IV.G of this Plan; *provided* that: (i) any recovery by the Wind-Down Debtor (and the beneficiaries thereof) on account of any Non-Released D&O Claim, including in each case by way of settlement or judgment, shall be satisfied solely by and to the extent of the proceeds of the Debtors' available D&O Liability Insurance Policies (and/or from the D&O Carriers directly) after payment from such D&O Liability Insurance Policies of any and all covered costs and expenses incurred in connection with the defense of the Non-Released D&O Claims; (ii) any party, including any trustee or any beneficiary of the Wind-Down Debtor, seeking to execute, garnish, or otherwise attempt to collect on any settlement of or judgment in the Non-Released D&O Claims shall do so solely upon available insurance coverage from the Debtors' available D&O Liability Insurance Policies; and (iii) no party shall (a) record any judgment against the CEO or CCO, or (b) otherwise attempt to collect, directly or indirectly, from the personal assets of the CEO or CCO with respect to the Non-Released D&O Claims. For the avoidance of doubt, this provision does not enjoin, limit, or impair direct claims held by third parties against the Debtors' CEO or CCO (if any) other than any direct claims held by Holders of Claims or Interests that opt into the third-party release in Article VIII.B of this Plan. Only upon the occurrence of the earlier of (x) a release being given as part of any later settlement of the Non-Released D&O Claims; (y) final resolution of any coverage claims asserted against the Debtors' available D&O Liability Insurance Policies on account of the Non-Released D&O Claims; or (z) exhaustion of the available insurance coverage under the D&O Liability Insurance Policies, the Non-Released D&O Claims shall be released and discharged without the need for further action or Bankruptcy Court order. For the avoidance of doubt, any release of the Non-Released D&O Claims shall not become effective until one of the three conditions stated in the preceding sentence above has been met.

## G. The D&O Settlement

On the Effective Date, the terms of the D&O Settlement shall be effectuated as provided in this Article IV.G.

Pursuant to the D&O Settlement, CEO shall repay the \$1,900,000 received from the Debtors on or around February 28, 2022, by paying the after-tax amount of such transfer (approximately \$1,125,000) to OpCo in cash and assigning the right, if any, to any tax refund for the balance to the Wind-Down Debtor. CEO shall subordinate any Claims (including any indemnification claims asserted under this Art. IV.F) he holds against the Debtors until all other Holders of Claims are paid in full. CCO shall subordinate 50 percent of any Claims he holds other than indemnification claims (and 100% of any indemnification claims asserted under this Art. IV.F) against the Debtors until all other Holders of Claims are paid in full; *provided, however*, that in the event the D&O Carriers deny coverage to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.

CEO and CCO, each as insureds, under the D&O Liability Insurance Policies agree: (i) not to draw down on the Side-A Policy; *provided, however*, that should coverage continue to be available under the Side-A Policy following resolution of the Debtors' and/or the Wind-Down Debtor's claims for the avoidance of the premium paid for the policy (whether by judgment or settlement or otherwise) such officer shall be entitled to seek coverage under the Side-A Policy to the extent any such coverage remains; and (ii) not to object to any settlement by the Debtors or Wind Down Entity of avoidance claims under the Side-A Policy, even if such settlement results in termination of benefits under the Side-A Policy. For the avoidance of doubt, this agreement is not intended to and shall not alter or amend each of the insureds' duties under the D&O Liability Insurance Policies. In the event that any insurer under the D&O Liability Insurance Policies denies coverage for any reason, the Wind-Down Debtor shall have the right to bring a coverage claim against the insurer(s) in the name of the insured, the insureds shall reasonably cooperate with respect to any such claim, and the insured may participate at their election (and at their sole cost). For the avoidance of doubt, nothing contained in this Plan is intended as a waiver or release of the Debtors' and/or Wind-Down Debtor's right to assert any Non-Released D&O Claim, but rather limits such recovery in the manner set forth above.

CEO and CCO shall be entitled to receive their salary and benefits for as long as they work for the Debtors and/or the Wind-Down Debtor and retain the right to assert claims for advancement and indemnification up to the limits of any available coverage in the event any of the insurers that issued the Management Liability Policy, the Excess Policy, or the Side-A Policy denies coverage to CEO and/or CCO based upon or arising out of the lack of a formal claim for indemnification; *provided, however*, that any such indemnification or advancement claims shall be subordinated in full unless and until all other Holders of Claims are paid in full; *provided, further*, that in the event that any of the D&O Carriers deny coverage to CEO or CCO under the D&O Insurance Policies on account of such subordination of any indemnification claim, then any indemnification claims by CEO or CCO shall not be so subordinated, but may be filed as an OpCo General Unsecured Claim.

CEO and CCO shall subordinate any and all rights and entitlements under the Cornerstone A-Side Management Liability Insurance Policy to Voyager Digital Ltd., Policy Number ELU184179-22, to any recovery by the Debtors and/or the Wind-Down Debtor on account of the Debtors' and/or Wind-Down Debtor's claims for the avoidance of the premium paid for the policy. For the avoidance of doubt, should coverage continue to be available under the Side-A Policy following resolution of the Debtors' and/or the Wind-Down Debtor's claims for the avoidance of the premium paid for the policy (whether by judgment or settlement or otherwise), CEO and/or CCO shall be entitled to seek coverage



under the Side-A Policy. CEO and CCO shall remain at, and continue performing the responsibilities of, their respective position(s) with the Debtors and assist with the Debtors' transition for at least 30 days from entry of the Confirmation Order; *provided* that CCO shall have no obligation to remain at his position with the Debtors beyond January 15, 2023 and the CEO shall have the right to pursue and engage in any employment opportunity, business venture, consulting arrangement, or investment that may become available; *provided, further*, that both the CEO and CCO shall be available to the Debtors and/or the Wind-Down Debtor for a maximum of five hours per month for the one year following the Effective Date.

In the event that the sworn financial disclosure statements under penalty of perjury provided to the Debtors, the Special Committee and the Committee by CEO and CCO are later determined at any time by Final Order of the Bankruptcy Court or other court of competent jurisdiction to be materially inaccurate, (a) the limitations on recovery by the Wind-Down Debtor under this Article IV.G shall no longer apply, (b) any and all release, exculpation and injunction provisions in Article VIII of this Plan with respect to CEO and/or CCO (as applicable) shall be deemed null and void, (c) all Releasing Parties' rights with respect to the CEO and/or CCO (as applicable) shall be fully intact and preserved, (d) amounts paid by CEO shall not be repaid by the Wind-Down Debtor, and (e) any applicable statute of limitations shall be deemed tolled from the Petition Date to the date of entry of the order referenced above. The Wind-Down Debtor, as successor to the Debtors, shall have standing to bring a motion seeking relief pursuant to this Article IV.G.

Entry of the Confirmation Order shall be deemed approval of the D&O Settlement and, to the extent not already approved by the Bankruptcy Court, the Debtors or the Wind-Down Debtor, as applicable, are authorized to negotiate, execute, and deliver those documents necessary or appropriate to effectuate the D&O Settlement, without further notice or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Debtors, the Wind-Down Debtor, the Committee, and the Special Committee may deem to be necessary to effectuate the D&O Settlement.

#### **H. The Wind-Down Debtor**

On the Effective Date, the Wind-Down Debtor shall be formed or converted into for the benefit of the Wind-Down Debtor Beneficiaries and each of the Debtors shall transfer the Wind-Down Debtor Assets for distribution in accordance with the terms of the Plan. The Confirmation Order shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan.

1. Establishment of a Wind-Down Debtor

Pursuant to the Plan Administrator Agreement, the Wind-Down Debtor will be established, formed, merged, or converted. The Wind-Down Debtor shall be the successor-in-interest to the Debtors, and the Wind-Down Debtor shall be a successor to the Debtors' rights, title, and interest to the Wind-Down Debtor Assets. The Wind-Down Debtor will conduct no business operations and will be charged with winding down the Debtors' Estates. The Wind-Down Debtor shall be managed by the Plan Administrator and shall be subject to the Wind-Down Debtor Oversight Committee. The Wind-Down Debtor shall be administered in accordance with the terms of the Plan Administrator Agreement and shall be subject to the Wind-Down Budget and the Non-Released D&O Claim Budget. For the avoidance of doubt, the Wind-Down Debtor shall not have any right or interest in any Cause of Action or Claim constituting an Acquired Asset. The Wind-Down Debtor shall be administered in a manner consistent with the SEC's published guidance on liquidating trusts.

Prior to the Effective Date, any and all of the Debtors' assets shall remain assets of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and on the Effective Date the Wind-Down Debtor Assets shall, subject to the Plan Administrator Agreement, be transferred to and vest in the Wind-Down Debtor. For the avoidance of doubt, to the extent not otherwise waived in writing, released, settled, compromised, assigned or sold pursuant to a prior order or the Plan, the Wind-Down Debtor specifically retains and reserves the right to assert, after the Effective Date, any and all of the Vested Causes of Action and related rights, whether or not asserted as of the Effective Date, and all proceeds of the foregoing, subject to the terms of the Plan, including without limitation Article IV.F and Article IV.G.

Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, only the Wind-Down Debtor and the Plan Administrator shall have the right to pursue or not to pursue, or, subject to the terms hereof and the Plan Administrator Agreement, compromise or settle any Wind-Down Debtor Assets transferred to the Wind-Down Debtor. On and after the Effective Date, the Wind-Down Debtor and the Plan Administrator may, without further Bankruptcy Court approval, commence, litigate, and settle any Vested Causes of Action or Claims relating to any Wind-Down Debtor Assets transferred to the Wind-Down Debtor or rights to payment or Claims that belong to the Debtors as of the Effective Date or are instituted by the Wind-Down Debtor and the Plan Administrator on or after the Effective Date, except as otherwise expressly provided herein and in the Plan Administrator Agreement. All of the Wind-Down Debtor's activities shall be subject to the Wind-Down Budget and the Non-Released D&O Claim Budget. The Wind-Down Debtor shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code.

The Wind-Down Debtor shall be deemed hereby substituted as plaintiff, defendant, or in any other capacity for the Debtors and the Committee, as applicable, in any Causes of Action pending before the Bankruptcy Court or any other court that relates to a Wind-Down Debtor Asset without the need for filing any motion for such relief. On the Effective Date, the Debtors and the Plan Administrator shall execute the Plan Administrator Agreement and shall have established the Wind-Down Debtor pursuant hereto. In the event of any conflict between the terms of this Article IV.H and the terms of the Plan Administrator Agreement, the terms of the Plan Administrator Agreement shall control.

2. Wind-Down Debtor Assets

Notwithstanding any prohibition on assignability under applicable non-bankruptcy law, on the Effective Date and thereafter if additional Wind-Down Debtor Assets become available, the Debtors shall be deemed, subject to the Plan Administrator Agreement, to have automatically transferred to the



applicable Wind-Down Debtor all of their right, title, and interest in and to all of the Wind-Down Debtor Assets, in accordance with section 1141 of the Bankruptcy Code. All such assets shall automatically vest in the Wind-Down Debtor free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims and Interests as set forth herein and the expenses of the Wind-Down Debtor as set forth herein and in the Plan Administrator Agreement. Thereupon, the Debtors shall have no interest in or with respect to the Wind-Down Debtor Assets or the Wind-Down Debtor.

3. Treatment of Wind-Down Debtor for Federal Income Tax Purposes; No Successor-in-Interest

The Wind-Down Debtor shall be established for the primary purpose of liquidating and distributing the Wind-Down Debtor Assets transferred to it, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Wind-Down Debtor. Accordingly, the Plan Administrator may, in an expeditious but orderly manner, liquidate the Wind-Down Debtor Assets, make timely distributions to the Wind-Down Debtor Beneficiaries and not unduly prolong its duration. The Wind-Down Debtor shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Wind-Down Debtor Agreement. The record holders of beneficial interests shall be recorded and set forth in a register maintained by the Wind-Down Debtor expressly for such purpose.

The Wind-Down Debtor is intended to qualify as a “grantor trust” for federal income tax purposes to the extent reasonably practicable, with the Wind-Down Debtor Beneficiaries treated as grantors and owners of the Wind-Down Debtor. However, with respect to any of the assets of the Wind-Down Debtor that are subject to potential disputed claims of ownership or uncertain distributions, or to the extent “liquidating trust” treatment is otherwise unavailable, the Debtors anticipate that such assets will be subject to disputed ownership fund treatment under Section 1.468B-9 of the Treasury Regulations, that any appropriate elections with respect thereto shall be made, and that such treatment will also be applied to the extent possible for state and local tax purposes. Under such treatment, a separate federal income tax return shall be filed with the IRS for any such account. Any taxes (including with respect to interest, if any, earned in the account) imposed on such account shall be paid out of the assets of the respective account (and reductions shall be made to amounts disbursed from the account to account for the need to pay such taxes).

4. Appointment of Plan Administrator

The Plan Administrator shall be selected by the Committee, in consultation with the Debtors, and shall be identified in the Plan Supplement. The appointment of the Plan Administrator shall be approved in the Confirmation Order, and the Plan Administrator’s duties shall commence as of the Effective Date. The Plan Administrator shall administer the distributions to the Wind-Down Debtor Beneficiaries and shall serve as a representative of the Estates under section 1123(b) of the Bankruptcy Code for the purpose of enforcing Vested Causes of Action belonging to the Estates that are not released, waived, settled, compromised, or transferred pursuant to the Plan and subject to the limitations set forth in the Plan, including Article IV.F and Article IV.G.

In accordance with the Plan Administrator Agreement, the Plan Administrator shall serve in such capacity through the earlier of (i) the date on which the Wind-Down Debtor is dissolved in accordance with the Plan Administrator Agreement, and (ii) the date on which a Plan Administrator resigns, is terminated, or is otherwise unable to serve; *provided, however*, that, in the event that a Plan Administrator resigns, is terminated, or is otherwise unable to serve, the Wind-Down Debtor Oversight Committee shall appoint a successor to serve as a Plan Administrator in accordance with the Plan

Administrator Agreement. If the Wind-Down Debtor Oversight Committee does not appoint a successor within the time periods specified in the Plan Administrator Agreement, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Wind-Down Debtor, shall approve a successor to serve as a Plan Administrator.

5. Responsibilities of Plan Administrator

Responsibilities of the Plan Administrator shall be as identified in the Plan Administrator Agreement and shall include, but are not limited to:

- (a) implementing the Wind-Down Debtor, and making distributions contemplated by the Plan;
- (b) marshalling, marketing for sale, and winding down any of the Debtors' assets constituting Wind-Down Debtor Assets;
- (c) appointing an independent director at each Debtor to act as a fiduciary for such Debtor entity in connection with the resolution of the Intercompany Claims;
- (d) overseeing the accounts of the Debtors and the Wind-Down Debtor and the wind down and dissolution of the Debtors and the Wind-Down Debtor, including effectuating the transactions described in the Restructuring Transactions Memorandum;
- (e) receiving, maintaining, conserving, supervising, prosecuting, collecting, settling, managing, investing, protecting, and where appropriate, causing the Wind-Down Debtor to abandon the Wind-Down Debtor Assets, including causing the Wind-Down Debtor to invest any moneys held as Wind-Down Debtor Assets;
- (f) opening and maintaining bank accounts on behalf of or in the name of the Debtors or the Wind-Down Debtor, including, in the Plan Administrator's discretion, separating bank accounts for each of the Debtors;
- (g) entering into any agreement or executing any document or instrument required by or consistent with the Plan, the Confirmation Order, or the Plan Administrator Agreement, and to perform all obligations thereunder;
- (h) collecting and liquidating all Wind-Down Debtor Assets, including the sale of any Wind-Down Debtor Assets;
- (i) protecting and enforcing the rights to the Wind-Down Debtor Assets (including any Vested Causes of Action and Contributed Third-Party Claims) vested in the Wind-Down Debtor and Plan Administrator by the Plan Administrator Agreement by any method deemed appropriate, including, without limitation, by judicial proceedings or otherwise;
- (j) investigating any Wind-Down Debtor Assets, and any other potential Vested Causes of Action and Contributed Third-Party Claims;
- (k) reviewing, reconciling, compromising, settling, objecting, or prosecuting Claims or Interests of any kind;

- (l) seeking the examination of any Person pursuant to Federal Rule of Bankruptcy Procedure 2004;
- (m) retaining professionals, disbursing agents, and other agents, independent contractors, and third parties pursuant to the Plan Administrator Agreement and paying the reasonable compensation thereof;
- (n) paying all lawful expenses, debts, charges, taxes, and other liabilities, and making all other payments relating to the Wind-Down Debtor Assets, solely out of Wind-Down Debtor Assets;
- (o) prosecuting and settling the Vested Causes of Action, including, without limitation, the 3AC Claims, FTX Claims, Alameda Claims, Contributed Third-Party Claims, and any causes of action not included in the Asset Purchase Agreement or released under the Plan;
- (p) reviewing, reconciling, pursuing, commencing, prosecuting, compromising, settling, dismissing, releasing, waiving, withdrawing, abandoning, resolving, or electing not to pursue all Vested Causes of Action and Contributed Third-Party Claims;
- (q) acquiring litigation and other claims related to the Debtors, and prosecuting such claims;
- (r) reviewing and compelling turnover of the Debtors or the Wind-Down Debtor's property;
- (s) calculating and making all Distributions to the holders of Allowed Claims against each Debtor and, solely to the extent of payment in full of Allowed Claims, to holders of Allowed Interests, as provided for in, or contemplated by, the Plan and the Plan Administrator Agreement; *provided* that because the Plan does not substantively consolidate the Debtors' Estates, the Plan Administrator shall make Distributions from the Wind-Down Debtor Assets to the holders of Claims and Interests (if applicable) against that specific Debtor;
- (t) establishing, administering, adjusting, and maintaining the Wind-Down Reserve and the Disputed Claims Reserve;
- (u) withholding from the amount distributable to any Person the maximum amount needed to pay any tax or other charge that the Plan Administrator has determined, based upon the advice of his agents or professionals, may be required to be withheld from such Distribution under the income tax or other laws of the United States or of any state or political subdivision thereof;
- (v) in reliance upon the Debtors' Schedules, the official Claims Register maintained in the Chapter 11 Cases and the Debtors' filed lists of equity security holders, reviewing, and where appropriate, allowing or objecting to Claims and (if applicable) Interests, and supervising and administering the commencement, prosecution, settlement, compromise, withdrawal, or resolution of all objections

to Disputed Claims and (if applicable) Disputed Interests required to be administered by the Wind-Down Debtor;

- (w) making all tax withholdings, filing tax information returns, filing and prosecuting tax refunds claims, making tax elections by and on behalf of the Debtors or the Wind-Down Debtor, and filing tax returns for the Debtors or the Wind-Down Debtor pursuant to and in accordance with the Plan, and paying taxes, if any, payable for and on behalf of the Debtors or the Wind-Down Debtor, as applicable; *provided, however*, that notwithstanding any other provision of the Plan Administrator Agreement, the Plan Administrator shall not have any responsibility or personal liability in any capacity whatsoever for the signing or accuracy of the Debtors' income tax returns that are due to be filed after the Effective Date or for any tax liability related thereto;
- (x) abandoning or donating to a charitable organization qualifying under IRC section 501(c)(3) any Wind-Down Debtor Assets that the Plan Administrator determines to be too impractical to distribute or of inconsequential value;
- (y) seeking a determination of tax liability or refund under Bankruptcy Code section 505;
- (z) establishing reserves for taxes, assessments, and other expenses of administration of the Debtors or the Wind-Down Debtor as may be necessary and appropriate for the proper operation of matters incident to the Debtors or the Wind-Down Debtor;
- (aa) paying Wind-Down Debtor Expenses;
- (bb) if the Plan Administrator deems appropriate in the Plan Administrator's sole discretion, seeking to establish a bar date for filing proofs of Interest in any Debtor or otherwise to determine the holders and extent of Allowed Interests in any Debtor;
- (cc) purchasing and carrying all insurance policies that the Plan Administrator deems reasonably necessary or advisable and paying all associated insurance premiums and costs;
- (dd) undertaking all administrative functions remaining in the Chapter 11 Cases to the extent necessary to carry out the Debtors', the Wind-Down Debtor's, or the Plan Administrator's duties under the Plan, including reporting and making required payments of fees to the U.S. Trustee and overseeing the closing of the Chapter 11 Cases;
- (ee) retaining, terminating, appointing, hiring, or otherwise employees, personnel, management, and directors at any of the Debtors to the extent necessary to carry out the purposes of the Plan Administrator Agreement and the Plan, including, without limitation, to address any disputes between the Debtors;

- (ff) exercising, implementing, enforcing, and discharging all of the terms, conditions, powers, duties, and other provisions of the Plan, the Confirmation Order, and the Plan Administrator Agreement; and
- (gg) taking all other actions consistent with the provisions of the Plan and the Plan Administrator Agreement that the Plan Administrator deems reasonably necessary or desirable to administer the Debtors and the Wind-Down Debtor.

6. The Wind-Down Debtor Oversight Committee

The Wind-Down Debtor Oversight Committee shall consist of those parties selected by the Committee and identified in the Plan Supplement, and which, at no time shall consist of greater than seven members.

The Wind-Down Debtor Oversight Committee shall have the responsibility to review and advise the Plan Administrator with respect to the liquidation and distribution of the Wind-Down Debtor Assets transferred to the Wind-Down Debtor in accordance herewith and the Plan Administrator Agreement. For the avoidance of doubt, in advising the Plan Administrator, the Wind-Down Debtor Oversight Committee shall maintain the same fiduciary responsibilities as the Plan Administrator. Vacancies on the Wind-Down Debtor Oversight Committee shall be filled by a Person designated by the Plan Administrator, subject to the unanimous consent of the remaining member or members of the Wind-Down Debtor Oversight Committee. The Plan Administrator shall have the authority to seek an order from the Bankruptcy Court removing or replacing members of the Wind-Down Debtor Oversight Committee for cause.

7. Expenses of Wind-Down Debtor

The Wind-Down Debtor Expenses shall be paid from the Wind-Down Debtor Assets subject to the Wind-Down Budget and the Non-Released D&O Claim Budget.

8. Insurance; Bond

The Plan Administrator may obtain insurance coverage (in the form of an errors and omissions policy or otherwise) with respect to the liabilities and obligations of the Plan Administrator and the Wind-Down Debtor Oversight Committee under the Plan Administrator Agreement. Unless otherwise agreed to by the Wind-Down Debtor Oversight Committee, the Plan Administrator shall serve with a bond, the terms of which shall be agreed to by the Wind-Down Debtor Oversight Committee, and the cost and expense of which shall be paid by the Wind-Down Debtor.

9. Fiduciary Duties of the Plan Administrator

Pursuant hereto and the Plan Administrator Agreement, the Plan Administrator shall act in a fiduciary capacity on behalf of the interests of all Holders of Claims and Interests that will receive distributions pursuant to Plan.

10. Termination of the Wind-Down Debtor

The Wind-Down Debtor will terminate on the earlier of: (a) (i) the final liquidation, administration and distribution of the Wind-Down Debtor Assets in accordance with the terms of the Plan Administrator Agreement and the Plan, and its full performance of all other duties and functions as set forth herein or in the Plan Administrator Agreement and (ii) the Chapter 11 Cases of the Debtors have been closed; or (b) the Plan Administrator determines in its reasonable judgment that the Wind-Down

Debtor lacks sufficient assets and financial resources, after reasonable collection efforts, to complete the duties and powers assigned to him or her under the Plan, the Confirmation Order and/or the Plan Administrator Agreement. After (x) the final distributions pursuant hereto, (y) the Filing by or on behalf of the Wind-Down Debtor of a certification of dissolution with the Bankruptcy Court, and (z) any other action deemed appropriate by the Plan Administrator, the Wind-Down Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions.

#### 11. Liability of Plan Administrator; Indemnification

Neither the Plan Administrator, the Wind-Down Debtor Oversight Committee, their respective members, employees, employers, designees or professionals, or any of their duly designated agents or representatives (each, a “Wind-Down Debtor Party” and collectively, the “Wind-Down Debtor Parties”) shall be liable for losses, claims, damages, liabilities or expenses in connection with the affairs of the Wind-Down Debtor or for the act or omission of any other Wind-Down Debtor Party, nor shall the Wind-Down Debtor Parties be liable for any act or omission taken or omitted to be taken pursuant to the discretion, powers and authority conferred, or in good faith believed to be conferred by the Plan Administrator Agreement or the Plan other than for specific acts or omissions resulting from such Wind-Down Debtor Party’s willful misconduct, gross negligence or actual fraud. Subject to the Plan Administrator Agreement, the Plan Administrator shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee, and the Wind-Down Debtor Oversight Committee shall be entitled to enjoy all of the rights, powers, immunities and privileges of an official committee of unsecured creditors. The Plan Administrator or the Wind-Down Debtor Oversight Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Plan Administrator nor the Wind-Down Debtor Oversight Committee shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Plan Administrator, the Wind-Down Debtor Oversight Committee, or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or actual fraud. The Wind-Down Debtor shall indemnify and hold harmless the Wind-Down Debtor Parties (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys’ fees, disbursements, and related expenses) that such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Wind-Down Debtor or the Plan or the discharge of their duties hereunder; *provided, however*, that no such indemnification will be made to such Persons for actions or omissions as a result of willful misconduct, gross negligence, or actual fraud. Persons dealing or having any relationship with the Plan Administrator shall have recourse only to the Wind-Down Debtor Assets and shall look only to the Wind-Down Debtor Assets to satisfy any liability or other obligations incurred by the Wind-Down Debtor or the Wind-Down Debtor Oversight Committee to such Person in carrying out the terms of the Plan Administrator Agreement, and neither the Plan Administrator nor the Wind-Down Debtor Oversight Committee, shall have any personal obligation to satisfy any such liability. The Plan Administrator and/or the Wind-Down Debtor Oversight Committee members shall not be liable whatsoever except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into the Plan Administrator Agreement against any of them. The Wind-Down Debtor shall promptly pay expenses reasonably incurred by any Wind-Down Debtor Party in defending, participating in, or settling any action, proceeding or investigation in which such Wind-Down Debtor Party is a party or is threatened to be made a party or otherwise is participating in



connection with the Plan Administrator Agreement or the duties, acts or omissions of the Plan Administrator or otherwise in connection with the affairs of the Wind-Down Debtor, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Wind-Down Debtor Party hereby undertakes, and the Wind-Down Debtor hereby accepts his or her undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such exculpated party is not entitled to be indemnified therefor under the Plan Administrator Agreement. The foregoing indemnity in respect of any Wind-Down Debtor Party shall survive the termination of such Wind-Down Debtor Party from the capacity for which they are indemnified.

12. No Liability of the Wind-Down Debtor

On and after the Effective Date, the Wind-Down Debtor shall have no liability on account of any Claims or Interests except as set forth herein and in the Plan Administrator Agreement. All payments and all distributions made by the Plan Administrator hereunder shall be in exchange for all Claims or Interests against the Debtors.

**I. Sources of Consideration for Plan Distributions**

Distributions under the Plan shall be funded by (i) the proceeds of Purchaser's payment obligations under Sections 2.1 and 2.2 of the Asset Purchase Agreement and distributions of Acquired Coins pursuant to Sections 6.12, and 6.14 of the Asset Purchase Agreement, (ii) the Wind-Down Debtor from the Wind-Down Debtor Assets; *provided, however*, that Allowed Professional Fee Claims shall be paid from the Professional Fee Escrow Account in the first instance. The Wind-Down Debtor Assets shall be used to pay the Wind-Down Debtor Expenses (including the compensation of the Plan Administrator and any professionals retained by the Wind-Down Debtor), and to satisfy payment of Allowed Claims and Interests as set forth in the Plan.

**J. Corporate Existence and Dissolution**

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) in effect prior to the Effective Date, except to the extent such certificates or articles of incorporation, certificates of formation, certificates of organization, or certificates of limited partnership and bylaws, operating agreements, limited liability company agreements, or limited partnership agreements (or other formation documents) are amended pursuant to the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings under applicable state or federal law).

On and after the Effective Date, the Wind-Down Debtor will be authorized and directed to implement the Plan and any applicable orders of the Bankruptcy Court, and the Wind-Down Debtor shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.



Upon a certification to be Filed with the Bankruptcy Court by the Plan Administrator of all distributions having been made and completion of all of its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Wind-Down Debtor shall be deemed to be dissolved without any further action by the Debtors or the Wind-Down Debtor, including the Filing of any documents with the secretary of state for the state in which the Wind-Down Debtor are formed or any other jurisdiction. The Plan Administrator, however, shall have authority to take all necessary actions to dissolve the Debtors or the Wind-Down Debtor in and withdraw the Wind-Down Debtor from applicable states.

As soon as practicable after the Effective Date, the Wind-Down Debtor shall take such actions as the Wind-Down Debtor may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Wind-Down Debtor on behalf of any Wind-Down Debtor without need for any action or approval by the shareholders or board of directors or managers of such Debtor. On and after the Effective Date, the Debtors or the Wind-Down Debtor (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. Pursuant to the terms of this Plan, any Money Transmitter Licenses that have not been terminated shall be deemed withdrawn and no further action is required to be taken by the Debtors or the Wind-Down Debtor to effectuate such withdrawal; *provided* that, following the Effective Date, the Debtors or the Wind-Down Debtor, as applicable, shall use commercially reasonable efforts to comply with all state banking department requirements for the surrender of a Money Transmitter License. Nothing in this Plan shall be construed to limit the rights of creditors, Debtors, the Wind-Down Debtor, or regulators to pursue recoveries against surety bonds maintained by the Debtors in connection with this Money Transmitter Licenses. Notwithstanding such Debtors' dissolution, such Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

#### **K. Corporate Action**

Upon the Effective Date, all actions contemplated under the Plan, Definitive Documents, and Asset Purchase Agreement shall be deemed authorized and approved in all respects, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, managing-members, limited or general partners, or officers of the Debtors, the Wind-Down Debtor or any other Entity, including: (1) appointment of the directors, managers, members, and officers for the Wind-Down Debtor as provided herein; (2) the issuances, transfer, and distribution of the Wind-Down Debtor Assets; (3) the formation of the Wind-Down Debtor and appointment of the Plan Administrator and Wind-Down Debtor Oversight Committee; (4) the formation of any entities pursuant to and the implementation of the Plan and performance of all actions and transactions contemplated hereby and thereby; (5) the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; and (6) all other acts or actions contemplated by the Plan, Definitive Documents, and Asset Purchase Agreement or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions (including effectuating the Restructuring Transactions Memorandum and the Customer Onboarding Protocol) (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan, Definitive Documents, and Asset Purchase Agreement involving the corporate structure of the Debtors or the Wind-Down Debtor, as applicable, and any corporate action required by the Debtors or the Wind-Down Debtor, as applicable, in connection with the Plan shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers

of the Debtors or the Wind-Down Debtor, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Wind-Down Debtor, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, Securities, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Wind-Down Debtor, and any and all other agreements, documents, Securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Article IV.K shall be effective notwithstanding any requirements under non-bankruptcy law.

#### **L. Vesting of Assets in the Wind-Down Debtor**

Except as otherwise provided in the Plan, or in any agreement, instrument, or other document incorporated in the Plan, notwithstanding any prohibition of assignability under applicable non-bankruptcy law and in accordance with section 1141 of the Bankruptcy Code, on the Effective Date, all property constituting Wind-Down Debtor Assets, including all Vested Causes of Action of the Debtors (unless otherwise released, waived, compromised, settled, transferred, or discharged pursuant to the Plan), and any property acquired by any of the Debtors under the Plan shall vest in the Wind-Down Debtor, free and clear of all Liens, Claims, charges, or other encumbrances.

#### **M. Cancellation of Notes, Instruments, Certificates, and Other Documents**

On the later of the Effective Date and the date on which distributions are made pursuant to the Plan (if not made on the Effective Date), except for the purpose of evidencing a right to and allowing Holders of Claims and Interests to receive a distribution under the Plan or to the extent otherwise specifically provided for in the Plan, the Confirmation Order, or any agreement, instrument, or other document entered into in connection with or pursuant to the Plan or the Restructuring Transactions (including, without limitation, the Definitive Documents and the Asset Purchase Agreement), all notes, bonds, indentures, certificates, Securities, shares, purchase rights, options, warrants, collateral agreements, subordination agreements, intercreditor agreements, or other instruments or documents directly or indirectly evidencing, creating, or relating to any indebtedness or obligations of, or ownership interest in, the Debtors, giving rise to any Claims against or Interests in the Debtors or to any rights or obligations relating to any Claims against or Interests in the Debtors shall be deemed cancelled without any need for a Holder to take further action with respect thereto.

#### **N. Effectuating Documents; Further Transactions**

On and after the Effective Date, the Debtors, and its directors, managers, partners, officers, authorized persons, and members thereof, and the Wind-Down Debtor and Plan Administrator are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, Definitive Documents, and Asset Purchase Agreement, in the name of and on behalf of the Debtors and Wind-Down Debtor, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

#### **O. Section 1146(a) Exemption**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Wind-Down Debtor, the Purchaser, or to any other Entity) of property under the Plan, Definitive Documents, and Asset Purchase Agreement or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the

Wind-Down Debtor; (2) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, including the Asset Purchase Agreement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### **P. Preservation of Rights of Action**

In accordance with section 1123(b) of the Bankruptcy Code, the Wind-Down Debtor shall succeed to all rights to commence and pursue any and all Vested Causes of Action of the Debtors, whether arising before or after the Petition Date, including, without limitation, any actions specifically enumerated in the Schedule of Retained Causes of Action other than Causes of Action released, waived, settled, compromised, or transferred. Such rights shall be preserved by the Debtors and Wind-Down Debtor and shall vest in the Wind-Down Debtor, with the Wind-Down Debtor's rights to commence, prosecute, or settle such Causes of Action preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action expressly released, waived, settled, compromised, or transferred by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan or pursuant to the Asset Purchase Agreement, which shall be deemed released and waived by the Debtors and Wind-Down Debtor as of the Effective Date.

The Wind-Down Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the beneficiaries of the Wind-Down Debtor and in accordance with the Plan Administrator Agreement and the Plan. **No Entity may rely on the absence of a specific reference in the Schedules of Assets and Liabilities or Statement of Financial Affairs, the Plan, the Plan Supplement, the Disclosure Statement, or the Schedule of Retained Causes of Action to any Cause of Action against it as any indication that the Debtors or the Wind-Down Debtor, as applicable, will not pursue any and all available Causes of Action of the Debtors against it. The Wind-Down Debtor, on behalf of the Debtors and the Wind-Down Debtor, expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise provided in the Plan, including Article VIII of the Plan.** Unless any Cause of Action of the Debtors is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or pursuant to a Final Order, the Wind-Down Debtor, on behalf of the Debtors and Wind-Down Debtor and in accordance with the Plan Administrator Agreement, expressly reserves all such Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation or Consummation.

The Wind-Down Debtor, on behalf of the Debtors, reserves and shall retain such Causes of Action of the Debtors notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold against any Entity shall vest in the Wind-Down Debtor, except as otherwise provided in the Plan, including Article VIII of the Plan. The Wind-Down Debtor, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Wind-Down Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court in accordance with the Plan.

**Q. Election to Contribute Third-Party Claims**

Because aggregating all Contributed Third-Party Claims may enable the pursuit and settlement of such litigation claims in a more efficient and effective manner, each Holder of a Claim or Interest may agree, by electing on its ballot or opt-in form, to contribute its Contributed Third-Party Claims to the Wind-Down Debtor. By electing such option on its ballot or opt-in form, each Contributing Claimant agrees that, subject to the occurrence of the Effective Date and the formation of the Wind-Down Debtor, it will be deemed, without further action, (i) to have irrevocably contributed its Contributed Third-Party Claims to the Wind-Down Debtor, and (ii) to have agreed to execute any documents reasonably requested by the Debtors or the Wind-Down Debtor to memorialize and effectuate such contribution.

**R. Contribution of Contributed Third-Party Claims**

On the Effective Date, all Contributed Third-Party Claims will be irrevocably contributed to the Wind-Down Debtor and shall thereafter be Wind-Down Debtor Assets for all purposes. No Person may rely on the absence of a specific reference in the Plan, the Disclosure Statement, the Confirmation Order, the Plan Administrator Agreement, the Plan Supplement, or any other document as any indication that the Wind-Down Debtor will or will not pursue any and all available Contributed Third-Party Claims against such Person. The Wind-Down Debtor shall have, retain, reserve, and be entitled to assert all Contributed Third-Party Claims fully to the same extent that the Contributing Claimants could have asserted such claims prior to the Effective Date. For the avoidance of doubt, the Contributed Third-Party Claims shall not include the rights of any of the Contributing Claimants to receive the distributions under the Plan on account of their Claims or Interests.

**S. Closing the Chapter 11 Cases**

On and after the Effective Date, the Wind-Down Debtor shall be permitted to classify all of the Chapter 11 Cases of the Debtors except for the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, as closed, and all contested matters relating to any of the Debtors, including objections to Claims or Interests and any adversary proceedings, may be administered and heard in the Chapter 11 Case of Voyager Digital, LLC, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, irrespective of whether such Claims or Interests were Filed or such adversary proceeding was commenced against a Debtor whose Chapter 11 Case was closed.

**ARTICLE V.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption and Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy other than the Side-A Policy. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

#### **B. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or the Wind-Down Debtor, as applicable, under such Executory Contract or Unexpired Lease. Without limiting the general nature of the foregoing, and notwithstanding any non-bankruptcy law to the contrary, the Debtors and Wind-Down Debtor expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to any rejected Executory Contract or Unexpired Lease.

#### **C. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Counterparties to Executory Contracts or Unexpired Leases listed subject to rejection under the Plan shall be served with a notice of rejection of Executory Contracts and Unexpired Leases with the Plan Supplement. Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Claims, Noticing, and Solicitation Agent and served on the Debtors or Wind-Down Debtor, as applicable, no later than thirty days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, or the Wind-Down Debtor, the Estates, or their property without the need for any objection by the Wind-Down Debtor or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed released, and be subject to the permanent injunction set forth in Article VIII.D of the Plan, including any Claims against any Debtor listed on the Debtors' schedules as unliquidated, contingent, or disputed.** All Allowed Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease shall be treated as General Unsecured Claims in accordance with Article III.C of the Plan.

#### **D. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed**

The Debtors, the Wind-Down Debtor, or the Purchaser, as applicable pursuant to the Asset Purchase Agreement, shall pay Cures, if any, on the Effective Date. The Debtors shall provide notice of



the amount and timing of payment of any such Cure to the parties to the applicable assumed Executory Contracts or Unexpired Leases as part of the Plan Supplement. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure that differ from the ordinary course amounts paid or proposed to be paid by the Debtors, the Wind-Down Debtor, or the Purchaser shall be dealt with in the ordinary course of business and, if needed, shall be Filed with the Claims, Noticing, and Solicitation Agent on or before thirty days after the Effective Date.

**If any counterparty to an Executory Contract or Unexpired Lease does not receive a notice of assumption and applicable cure amount, such counterparty shall have until on or before thirty days after the Effective Date to bring forth and File a request for payment of Cure.** Any such request that is not timely Filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Debtor or the Wind-Down Debtor, without the need for any objection by the Wind-Down Debtor or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied and released upon payment by the Debtors or the Wind-Down Debtor or the Purchaser of the Cure in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty); *provided, however*, that nothing herein shall prevent the Wind-Down Debtor or the Purchaser, as applicable, from paying any Cure Claim despite the failure of the relevant counterparty to File such request for payment of such Cure. The Wind-Down Debtor or the Purchaser may also settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be Filed with the Bankruptcy Court on or before thirty days after the Effective Date. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' first scheduled omnibus hearing for which such objection is timely Filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

In the event of a dispute regarding: (1) the amount of any Cure Claim, (2) the ability of the Debtors, the Wind-Down Debtor, Purchaser, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed (or assumed and assigned, as applicable), or (3) any other matter pertaining to assumption or assignment, then any disputed Cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made as soon as reasonably practicable following, and in accordance with, the entry of a Final Order of the Bankruptcy Court resolving such dispute or as may be agreed upon by the Debtors, the Wind-Down Debtor, or Purchaser, as applicable, and the counterparty to the Executory Contract or Unexpired Lease, and any such unresolved dispute shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise or assignment of any Executory Contract or Unexpired Lease to the Purchaser and full payment of any applicable Cure pursuant to this Article V.D, or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement with the applicable Executory Contract or Unexpired Lease counterparty), shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assumed and assigned in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure has been fully paid pursuant to this Article V.D, in the amount and at the time in the ordinary course of business or upon and in accordance with any resolution of a Cure dispute (whether by order of the Bankruptcy Court or through settlement**



with the applicable Executory Contract or Unexpired Lease counterparty), shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, in the event that any counterparty to an Executory Contract or Unexpired Lease receives a notice of assumption and applicable proposed Cure amount, and disputes the Debtors' proposed Cure amount, such party shall not be required to File a Proof of Claim with respect to such dispute. Any counterparty to an Executory Contract or Unexpired Lease that does not receive a notice or applicable proposed Cure amount, and believes a Cure amount is owed, shall have thirty days after the Effective Date to File a Proof of Claim with respect to such alleged Cure amount, which Claim shall not be expunged until such Cure dispute is resolved.

#### **E. Insurance Policies**

Each D&O Liability Insurance Policy (including, without limitation, any "tail policy" and all agreements, documents, or instruments related thereto) other than the Side-A Policy shall be assumed, in their entirety, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date, pursuant to sections 105 and 365 of the Bankruptcy Code with the Wind-Down Debtor being authorized to pursue any proceeds thereof on behalf of the Debtors or the Wind-Down Debtor. The Side-A Policy shall ride through these Chapter 11 Cases with the Debtors, and the Wind-Down Debtor preserves all avoidance and other actions in connection with the premium paid thereunder. All beneficiaries under the D&O Insurance Policies reserve their rights under such D&O Insurance Policies subject to the limitations set forth in this Plan.

The Debtors or the Wind-Down Debtor, as applicable, shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policy (including, without limitation, any "tail policy" and all agreements, documents, or instruments related thereto) in effect prior to the Effective Date, and any current and former directors, officers, managers, and employees of the Debtors who served in such capacity at any time before or after the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy subject to the terms thereof regardless of whether such directors, officers, managers, and employees remain in such positions after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Debtors or the Wind-Down Debtor shall retain the ability to supplement such D&O Liability Insurance Policy as the Debtors or Wind-Down Debtor may deem necessary, subject to the prior written consent of the Wind-Down Debtor. Notwithstanding anything to the contrary contained in the Plan, the Wind-Down Debtor shall be entitled to pursue avoidance of the premium paid for the XL Specialty Insurance Company Cornerstone A-Side Management Liability Insurance Policy No. ELU184179-22, and nothing in this Plan shall be deemed a waiver or abrogation of any such rights.

The Debtors shall continue to satisfy their obligations under their insurance policies in full and continue such policies in the ordinary course of business. Each of the Debtors' insurance policies, and any agreements, documents, or instruments relating thereto shall be treated as Executory Contracts under the Plan. On the Effective Date: (a) the Debtors shall be deemed to have assumed all such insurance policies and any agreements, documents, and instruments relating thereto in their entirety; and (b) such insurance policies and any agreements, documents, or instruments relating thereto shall revert in the applicable Debtors or the Wind-Down Debtor unaltered.

#### **F. Reservation of Rights**

Nothing contained in the Plan or the Plan Supplement (unless otherwise explicitly provided) shall constitute an admission by the Debtors or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor or the Wind-Down Debtor has any liability

thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Wind-Down Debtor, as applicable, shall have forty-five days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease, including by rejecting such contract or lease effective as of the Confirmation Date.

**G. Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**H. Contracts and Leases Entered into After the Petition Date**

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed under section 365 of the Bankruptcy Code, will be performed by the applicable Debtor or Wind-Down Debtor liable thereunder in the ordinary course of its business. Such contracts and leases that are not rejected under the Plan shall survive and remain unaffected by entry of the Confirmation Order.

**ARTICLE VI.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Timing and Calculation of Amounts to Be Distributed**

Except (1) as otherwise provided herein, (2) upon a Final Order, or (3) as otherwise agreed to by the Debtors, the Purchaser, or the Wind-Down Debtor, as the case may be, and the Holder of the applicable Claim, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the next Distribution Date after such Claim becomes, as applicable, an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim shall receive the full amount of distributions that the Plan provides for Allowed Claims in the applicable Class from the Distribution Agent. In the event that any payment or distribution under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or distribution may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as specifically provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

**B. Rights and Powers of Distribution Agent**

**1. Powers of the Distribution Agent**

The Distribution Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties and exercise its rights under the Plan; (b) make all distributions contemplated under the Plan; (c) employ professionals to represent it with respect to its responsibilities and powers; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

From and after the Effective Date, the Distribution Agent, solely in its capacity as Distribution Agent, shall be exculpated by all Entities, including, without limitation, holders of Claims against and

Interests in the Debtors and other parties in interest, from any and all Claims, Causes of Action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon such Distribution Agent by the Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law, except for actions or omissions to act arising out of the gross negligence or willful misconduct, fraud, malpractice, criminal conduct, or ultra vires acts of such Distribution Agent. No holder of a Claim or Interest or other party in interest shall have or pursue any Claim or Cause of Action vested in a Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by such Distribution Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred on or after the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Distribution Agent on or after the Effective Date and any reasonable compensation and expense reimbursement claims (including reasonable attorney and/or other professional fees and expenses) made by such Distribution Agent shall be paid in Cash by the Wind-Down Debtor.

**C. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

1. Distributions Generally

Except as otherwise provided in the Plan (including in paragraph 8 below), the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the applicable register or in the Debtors' records as of the date of any such distribution (as applicable), including the address set forth in any Proof of Claim filed by that Holder.

2. Distributions on Account of Obligations of Multiple Debtors

For all purposes associated with distributions under the Plan, all guarantees by any Debtor of the obligations of any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be deemed eliminated so that any obligation that could otherwise be asserted against more than one Debtor shall result in a single distribution under the Plan. Any such Claims shall be subject to all potential objections, defenses, and counterclaims, and to estimation pursuant to section 502(c) of the Bankruptcy Code.

3. Record Date of Distributions

On the Distribution Record Date, the various transfer registers for each Class of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes in the record Holders of any Claims or Interests. The Distribution Agent shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date. In addition, with respect to payment of any Cure amounts or disputes over any Cure amounts, neither the Debtors nor the Distribution Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable Executory Contract or Unexpired Lease as of the Effective Date, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure amount.

4. Special Rules for Distributions to Holders of Disputed Claims and Interests

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the Wind-Down Debtor, on the one hand, and the Holder of a Disputed Claim or Interest, on the other hand,

or as set forth in a Final Order, no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Interest until all of the Disputed Claim or Interest has become an Allowed Claim or Interest or has otherwise been resolved by settlement or Final Order; *provided* that, if the Wind-Down Debtor does not dispute a portion of an amount asserted pursuant to an otherwise Disputed Claim or Interest, the Distribution Agent may make a partial distribution on account of that portion of such Claim or Interest that is not Disputed at the time and in the manner that the Distribution Agent makes distributions to similarly situated Holders of Allowed Claims or Interests pursuant to the Plan. Any dividends or other distributions arising from property distributed to Holders of Allowed Claims or Interests, as applicable, in a Class and paid to such Holders under the Plan shall also be paid, in the applicable amounts, to any Holder of a Disputed Claim or Interest, as applicable, in such Class that becomes an Allowed Claim or Interest after the date or dates that such dividends or other distributions were earlier paid to Holders of Allowed Claims or Interests in such Class.

5. De Minimis Distributions; Minimum Distributions

The Distribution Agent shall not make any Cash distributions to any Holder of an Allowed Claim or Interest pursuant to Article III.C.1-11 of this Plan on account of such Allowed Claim or Interest if such distribution is valued, in the reasonable discretion of the Distribution Agent, at less than \$1.00, and each Holder of an Allowed Claim or Interest to which this limitation applies shall not be entitled to any distributions under the Plan. Notwithstanding anything to the contrary in this Plan, there shall be no minimum distribution threshold on account of distributions of any Cryptocurrency to Holders of Allowed Account Holder Claims and Allowed OpCo General Unsecured Claims.

6. Undeliverable Distributions and Unclaimed Property

In the event that either (a) a distribution to any Holder is returned as undeliverable or (b) the Holder of an Allowed Claim or Interest does not respond to a request by the Debtors or the Distribution Agent for information necessary to facilitate a particular distribution, no distribution to such Holder shall be made unless and until the Distribution Agent has determined the then-current address of such Holder or received the necessary information to facilitate a particular distribution, at which time such distribution shall be made to such Holder without interest, dividends, or other accruals of any kind; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code on the date that is one year after the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Wind-Down Debtor automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable local, state, federal, or foreign escheat, abandoned, or unclaimed property laws to the contrary), and the Claim or Interest of any Holder to such property or interest in property shall not be entitled to any distributions under the Plan.

7. Manner of Payment Pursuant to the Plan

At the option of the Distribution Agent, any Cash payment to be made hereunder may be made by check, wire transfer, automated clearing house, credit card, or as otherwise provided in applicable agreements.

8. Distributions of Net Owed Coins; Additional Bankruptcy Distributions

As a general matter, the Purchaser will allocate each Account Holder's Net Owed Coins to its account on the Binance.US Platform, and each Holder of OpCo General Unsecured Claim's Pro Rata share of the Distributable Cryptocurrency (in Cash) to its account on the Binance.US Platform in accordance with, and subject to, the provisions of Section 6.12 of the Asset Purchase Agreement.

Subject to the terms of the Asset Purchase Agreement, the Purchaser may make Additional Bankruptcy Distributions to Transferred Creditors, including Distributable OpCo Cash and/or other Wind-Down Debtor Assets, corresponding to their Pro Rata shares of such Additional Bankruptcy Distribution (if such Additional Bankruptcy Distribution is in Cryptocurrency, based on the Transferred Cryptocurrency Value of the Cryptocurrency included in such Additional Bankruptcy Distribution), all in accordance with any applicable Post-Bankruptcy Statement (as defined in the Asset Purchase Agreement).

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim does not become a Transferred Creditor prior to the date that is three (3) months following the later of the Closing Date or the date on which the terms and conditions for the Binance.US Platform are made available for such Person to accept (as provided in the Customer Onboarding Protocol), then Purchaser shall convert any Cryptocurrency allocable to such Person into U.S. Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such U.S. Dollars, together with any cash or others assets in respect of such Persons, to the Debtors within five (5) Business Days, for further distribution by the Debtors in accordance with this Plan and the Customer Onboarding Protocol.

If any Account Holder or Holder of an Allowed OpCo General Unsecured Claim is located in an Unsupported Jurisdiction (as defined in the Asset Purchase Agreement), then the Net Owed Coins, Distributable Cryptocurrency (in Cash) and Additional Bankruptcy Distributions, if applicable, allocable to such Person shall be handled pursuant to Section 6.12(b) or, if applicable, Section 6.14(d) of the Asset Purchase Agreement. Notwithstanding anything to the contrary in the Asset Purchase Agreement, this Plan, or any Definitive Document, if any Account Holder or Holder of an Allowed OpCo General Unsecured Claim in an Unsupported Jurisdiction elects to not become a Transferred Creditor prior to the date that is three (3) months following the later of the Closing Date or the date on which the terms and conditions for the Binance.US Platform are made available for such Person to accept (as provided in the Customer Onboarding Protocol), then Purchaser shall on the date that is three (3) months following the later of the Closing Date or the date which the terms and conditions for the Binance.US Platform are made available for such person to accept, convert any Cryptocurrency allocable to such Person into U.S. Dollars at the then-prevailing rates (including applicable fees, spreads, costs and expenses) on the Binance.US Platform and deliver such U.S. Dollars, together with any cash or others assets in respect of such Persons, to the Debtors within five (5) Business Days, for further distribution by the Debtors in accordance with this Plan and the Customer Onboarding Protocol.

Purchaser shall have no responsibility to make any distributions other than as contemplated by Sections 6.12 and 6.14 of the Asset Purchase Agreement.

#### **D. Compliance Matters**

In connection with the Plan, to the extent applicable, the Debtors, the Wind-Down Debtor, any Distribution Agent, and any other applicable withholding and reporting agents shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including wind-down a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms that are reasonable and appropriate; *provided* that the Wind-Down Debtor and the Distribution Agent, as applicable, shall request appropriate

documentation from the applicable distributees and allow such distributees a reasonable amount of time to respond. The Debtors, the Wind-Down Debtor, the Distribution Agent, and any other applicable withholding and reporting agents reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

**E. Securities Registration Exemption**

To the extent that any Cryptocurrency (including VGX) is deemed to be a “security” (as defined in section 2(a)(1) of the Securities Act, section 101 of the Bankruptcy Code, or by any applicable laws of any Governmental Unit) by the SEC or any Governmental Unit, such Cryptocurrency to be offered, issued and distributed to Holders of Account Holder Claims or any other Holders of Claims hereunder, in each case in exchange for such Claims, shall be exempt, without any further act or action by any Entity, from registration under the Securities Act or any similar federal, state, or local law in reliance upon (i) section 1145 of the Bankruptcy Code (except with respect to an entity that is an “underwriter” as defined in subsection (b) of section 1145 of the Bankruptcy Code) or (ii) (including with respect to an entity that is an “underwriter”) pursuant to section 4(a)(2) under the Securities Act and/or Regulation D thereunder.

Notwithstanding anything to the contrary in the Plan, no entity may require a legal opinion regarding the validity of any transaction contemplated by the Plan, including, for the avoidance of doubt, whether the Cryptocurrency, to the extent deemed to be a “security” are exempt from registration.



**F.** ~~E.~~ **Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim, asserted in government issued currency (for the avoidance of doubt, not including any Cryptocurrency) other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

**G.** ~~F.~~ **Claims Paid or Payable by Third Parties**

1. Claims Paid by Third Parties

The Debtors or the Wind-Down Debtor, as applicable, shall reduce a Claim or Interest, and such Claim or Interest (or portion thereof) shall be disallowed without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim or Interest receives a payment on account of such Claim or Interest from a party that is not a Debtor or Wind-Down Debtor (or other Distribution Agent), as applicable, including any payments made in connection with the Sale Transaction. To the extent a Holder of a Claim or Interest receives a distribution on account of such Claim or Interest and receives payment from a party that is not a Debtor or a Wind-Down Debtor (or other Distribution Agent), including payments made in connection with the Sale Transaction, as applicable, on account of such Claim or Interest, such Holder shall, within ten Business Days of receipt thereof, repay, return, or deliver any distribution held by or transferred to the Holder to the applicable Wind-Down Debtor to the extent the Holder's total recovery on account of such Claim or Interest from the third party and under the Plan exceeds the amount of such Claim or Interest as of the date of any such distribution under the Plan. The failure of such Holder to timely repay, return, or deliver such distribution shall result in the Holder owing the applicable Wind-Down Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the ten-Business Day grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim or Interest that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim or Interest has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim or Interest (if and to the extent adjudicated by a court of competent jurisdiction or otherwise settled), then immediately upon such payment, such Claim or Interest may be expunged or reduced on the Claims Register by the Claims, Noticing, and Solicitation Agent to the extent of any such payment without an objection to such Claim or Interest having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.



### 3. Applicability of Insurance Policies

Except as otherwise provided herein, payments to Holders of Claims or Interests shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any rights, defenses, or Cause of Action that the Debtors, the Wind-Down Debtor or any other Entity may hold against any other Entity, including insurers, under any policies of insurance, agreements related thereto, or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers under the applicable insurance policies, agreements related thereto, and applicable non-bankruptcy law.

### H. ~~G.~~ **Setoffs and Recoupment**

Except as otherwise expressly provided for herein, each Debtor, the Wind-Down Debtor, or such Entity's designee as instructed by such Debtor, the Wind-Down Debtor, as applicable, may, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, set off against or recoup from an Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature whatsoever that the Debtor or the Wind-Down Debtor, as applicable, may have against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised, settled, or released on or prior to the Effective Date (whether pursuant to the Plan or otherwise). Notwithstanding the foregoing, except as expressly stated in Article VIII of this Plan, neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Debtors or the Wind-Down Debtor of any such Claims, rights, or Causes of Action the Debtors or the Wind-Down Debtor may possess against such Holder.

### I. ~~H.~~ **Allocation between Principal and Accrued Interest**

Except as otherwise provided herein, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof and as determined for federal income tax purposes) and second, to the extent the consideration exceeds the principal amount of the Allowed Claims, to the remaining portion of such Allowed Claim if any.

## ARTICLE VII.

### PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS AND INTERESTS

#### A. **Disputed Claims Process**

After the Effective Date, the Debtors, the Wind-Down Debtor, and any party-in-interest, shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim or Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim or Interest. If a Holder of a Claim or Interest in Class disputes the amount of their Claim or Interest as listed in the Schedules, the Holder should notify the Debtors or the Wind-Down Debtor of

such dispute. If the Debtors and the Holder agree to an amended Claim amount prior to the Effective Date, the Debtors shall file amended Schedules prior to the Effective Date. If between the Confirmation Date and the Effective Date, the dispute cannot be consensually resolved, the Holder may seek (by letter to the Court) to have the claim or interest dispute resolved before the Bankruptcy Court (and, with the consent of the Debtors, before any other court or tribunal with jurisdiction over the parties). After the Effective Date, the creditor may seek to have the claim dispute resolved before the Bankruptcy Court or any other court or tribunal with jurisdiction over the parties.

Notwithstanding anything in this Plan to the contrary: (1) all Claims against the Debtors that result from the Debtors' rejection of an Executory Contract or Unexpired Lease; (2) Claims filed to dispute the amount of any proposed Cure pursuant to section 365 of the Bankruptcy Code; and (3) Claims that the Debtors seek to have determined by the Bankruptcy Court, shall in all cases be determined by the Bankruptcy Court, if not otherwise resolved through settlement with the applicable claimant.

On the Effective Date, the Debtors or Plan Administrator, as applicable, may establish one or more accounts or funds to hold and dispose of certain assets, pursue certain litigation (including the Causes of Action preserved under the Plan or otherwise vesting in the Wind-Down Debtor), and/or satisfy certain Claims (including Claims that are contingent or have not yet been Allowed). For any such account or fund, the Debtors or the Plan Administrator, as applicable, may take the position that grantor trust treatment applies in whole or in part. To the extent such treatment applies to any such account or fund, for all U.S. federal income tax purposes, the beneficiaries of any such account or fund would be treated as grantors and owners thereof, and it is intended, to the extent reasonably practicable, that any such account or fund would be classified as a liquidating trust under section 301.7701-4 of the Treasury Regulations. Alternatively, any such account or fund may be subject to the tax rules that apply to "disputed ownership funds" under 26 C.F.R. 1.468B-9. If such rules apply, such assets would be subject to entity-level taxation, and the Debtors and the Wind-Down Debtor would be required to comply with the relevant rules.

## **B. Objections to Claims or Interests**

Except as otherwise specifically provided in the Plan, after the Effective Date, the Wind-Down Debtor shall have the sole authority on behalf of the Debtors to: (1) File, withdraw, or litigate to judgment, any objections to Claims or Interests; and (2) settle or compromise any Disputed Claim or Interest without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, the Wind-Down Debtor shall have and retain any and all rights and defenses each such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Article IV.P of the Plan. In the event that the Wind-Down Debtor settles or otherwise compromises the Signatory Governmental Claims (as defined in the Governmental Claimant Stipulation) asserted against TopCo, any other Claim Filed or asserted by a Governmental Unit against TopCo, or any other Claim Filed or asserted against TopCo in an amount greater than \$100,000, any such proposed settlement or compromise shall require approval of the Bankruptcy Court after notice and a hearing.

Any objections to Claims or Interests shall be Filed on or before the Claims Objection Bar Date. For the avoidance of doubt, any party may object to any Claims or Interests prior to the Claims Objection Bar Date. Further, the Bankruptcy Court may extend the time period to object to Claims or Interests set forth in this paragraph at any time, including before or after the expiration of one hundred eighty days after the Effective Date, in its discretion or upon request by the Debtors or any party in interest.

### **C. Estimation of Claims**

Before or after the Effective Date, the Debtors or the Wind-Down Debtor, as applicable, may (but are not required to), at any time, request that the Bankruptcy Court estimate any Disputed Claim or Interest that is contingent or unliquidated pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any party previously has objected to such Disputed Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under sections 157 and 1334 of the Judicial Code to estimate any such Disputed Claim or Interest, including during the litigation of any objection to any Disputed Claim or Interest or during the pendency of any appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Disputed Claim or Interest that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions) and may be used as evidence in any supplemental proceedings, and the Debtors or the Wind-Down Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Disputed Claim or Interest that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen days after the date on which such Disputed Claim or Interest is estimated.

### **D. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, if any portion of a Claim or Interest is a Disputed Claim or Interest, no payment or distribution provided hereunder shall be made on account of such Claim or Interest unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest; *provided* that if only a portion of a Claim or Interest is Disputed, such Claim or Interest shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account of such undisputed amount.

### **E. Distributions After Allowance**

To the extent that a Disputed Claim or Interest ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim or Interest in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court Allowing any Disputed Claim or Interest becomes a Final Order, the Distribution Agent shall provide to the Holder of such Allowed Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Allowed Claim or Interest unless required under applicable bankruptcy law.

### **F. No Interest**

Unless otherwise specifically provided for herein or by Final Order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims against the Debtors, and no Holder of a Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed

Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

**G. Adjustment to Claims and Interests without Objection**

Any Claim or Interest that has been paid, satisfied, amended, superseded, cancelled, or otherwise expunged (including pursuant to the Plan) may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Debtor without the Wind-Down Debtor having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court. Additionally, any Claim or Interest that is duplicative or redundant with another Claim or Interest against the same Debtor may be adjusted or expunged on the Claims Register at the direction of the Wind-Down Debtor without the Wind-Down Debtor having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

**H. Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date.

**I. Disallowance of Claims or Interests**

Any Claims or Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors or the Wind-Down Debtor, as applicable.

**Except as otherwise provided herein or as agreed to by the Debtors or the Wind-Down Debtor, any and all Proofs of Claim Filed after the Bar Date shall be deemed disallowed and expunged as of the Effective Date subject to the approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.**

**J. Amendments to Proofs of Claim**

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Proof of Claim or Proof of Interest may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Wind-Down Debtor, and any such new or amended Proof of Claim or Proof of Interest Filed shall be deemed disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court.

## **ARTICLE VIII.**

### **EFFECT OF CONFIRMATION OF THE PLAN**

#### **A. Releases by the Debtors**

Notwithstanding anything contained in the Plan to the contrary, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Debtors, the Wind-Down Debtor, and their Estates, and in each case on behalf of themselves and their respective successors, assigns, and representatives, who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of, the foregoing Entities, from any and all Causes of Action, including any derivative claims, asserted or assertable on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, that the Debtors would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Chapter 11 Cases and related adversary proceedings, the Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, of the releases described in this Article VIII.A by the Debtors, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.A is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to the extent contemplated by Article IV.E and Article IV.F of the Plan, a bar to any of the Debtors or Wind-Down Debtor or their respective Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

Notwithstanding anything to the contrary contained herein, nothing in this Plan shall release, waive, or otherwise limit the (i) rights, duties, or obligations of the Purchaser under the Asset Purchase Agreement or the Definitive Documents and (ii) the Non-Released D&O Claims, but such Non-Released D&O Claims shall remain subject to the limitations contained in Article IV.E and Article IV.F of this Plan.



## B. Releases by Holders of Claims and Interests

Except as expressly set forth in the Plan, effective on the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives, from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of any of the Debtors, that such Entity would have been legally entitled to assert in its own right (whether individually or collectively or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Definitive Documents, the pursuit of consummation of the Plan, the administration and implementation of the Restructuring Transactions, or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date, *provided* that nothing in this Article VIII.B shall be construed to release the Released Parties from actual fraud, willful misconduct, or gross negligence as determined by a Final Order.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Article VIII.B, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article VIII.B is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) except to the extent contemplated by Article IV.F and Article IV.G of the Plan, a bar to any of the Releasing Parties or the Debtors or the Wind-Down Debtor or their respective Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

## C. Exculpation

Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor release or the third-party release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is exculpated from any Cause of Action for any act or omission arising on or after the Petition Date and prior to the Effective Date based on the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation or filing, or consummation of the Disclosure Statement, the Plan, the Special Committee Investigation, any Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter

11 Cases, the pursuit of Confirmation, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion), except for Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan; *provided* that nothing in the Plan shall limit the liability of professionals to their clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

To the extent that any Cryptocurrency is deemed to be a “security” by the SEC or any Governmental Unit, distribution of such Cryptocurrency shall have been done in good faith and in compliance with all applicable laws, rules, and regulations and the Exculpated Parties shall not be liable at any time for the violation of any applicable law, rule, or regulation governing the distribution of Cryptocurrency whether such Cryptocurrency is deemed to be a “security” or otherwise.

The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

#### **D. Injunction**

The assets of the Debtors and of the Wind-Down Debtor shall be used for the satisfaction of expense obligations and the payment of Claims and Interests only in the manner set forth in this Plan and shall not be available for any other purpose. All Persons and Entities who have held, hold, or may hold Claims or Interests based upon any act, omission, transaction, or other activity of any kind or nature related to the Debtors, the Wind-Down Debtor, or the Debtors’ Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in the Plan or the Confirmation Order, shall be precluded and permanently enjoined on and after the Effective Date from interfering with the use and distribution of the Debtors’ assets in the manner contemplated by the Plan.

In addition, as of the Effective Date and subject to the occurrence of the Effective Date, except as otherwise specifically provided in this Plan or the Confirmation Order, all Persons and Entities who have held, hold, or may hold Claims or Interests that are fully satisfied pursuant to the Plan or any Claim or Interest that is subject to the releases and exculpations set forth in Article VIII.B and Article VIII.C of this Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims or Interests, except for the receipt of the payments or distributions that are contemplated by this Plan.



#### **E. Release of Liens**

Except as otherwise provided in the Plan, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan or Confirmation Order on the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or the Wind-Down Debtor, as applicable, and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as requested by the Debtors or Wind-Down Debtor to evidence the release of such Lien, including the execution, delivery, and filing or recording of such documents evidencing such releases. The presentation or filing of the Confirmation Order to or with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

#### **F. OSC and SEC**

Notwithstanding any language to the contrary herein, no provision shall (a) preclude the OSC or the SEC from enforcing its police or regulatory powers; or (b) enjoin, limit, impair or delay the OSC or SEC from commencing or continuing any claims, causes of action, proceeding, or investigations against any non-Debtor person or non-Debtor entity in any forum.

#### **G. Protection against Discriminatory Treatment**

As provided by section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Entity, including Governmental Units, shall discriminate against any Debtor or the Wind-Down Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, any Debtor or the Wind-Down Debtor, or any Entity with which a Debtor or the Wind-Down Debtor has been or is associated, solely because such Debtor or the Wind-Down Debtor was a debtor under chapter 11 of the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

#### **H. Document Retention**

Upon the occurrence of the Effective Date, the Debtors' books and records shall be transferred to the Wind-Down Debtor, which shall continue to preserve all financial books and records, emails, and other financial documents relating to the Debtors' business that are currently in the Debtors' possession. The Wind-Down Debtor shall not destroy or otherwise abandon any such documents or records without providing advance notice to the U.S. Securities and Exchange Commission (c/o Therese Scheuer, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, ScheuerT@SEC.GOV) and seeking further authorization from this Bankruptcy Court. Nothing in this Plan or the Confirmation Order shall affect the obligations of the pre-Effective Date Debtors, the Wind-Down Debtor, and/or any

transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

#### **I. Reimbursement or Contribution**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

#### **J. Term of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code, or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. **All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.**

### **ARTICLE IX.**

#### **CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

##### **A. Conditions Precedent to the Effective Date**

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Article IX.B of the Plan:

1. The Bankruptcy Court shall have entered the Confirmation Order, which shall be in a form and substance reasonably satisfactory to the Debtors and the Committee, and subject to the consent rights of Purchaser under the Asset Purchase Agreement, and such order shall be a Final Order and in full force and effect.
2. The Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan, Definitive Documents, and the Asset Purchase Agreement.
3. Each Definitive Document and each other document contained in any supplement to the Plan, including the Plan Supplement and any exhibits, schedules, amendments, modifications or supplements thereto or other documents contained therein, shall have been executed or Filed, as applicable, in form and substance consistent in all respects with the Plan, and subject to the Purchaser's consent rights under the Asset Purchase Agreement, and shall not have been modified in a manner inconsistent therewith;
4. The Professional Fee Escrow Account shall have been established and funded with Cash in accordance with Article II.B.2 of the Plan.

5. The Wind-Down Reserve shall have been established and funded with Cash in accordance with the Plan.
6. If prior to the Outside Date, the Asset Purchase Agreement shall be in full force and effect and the Sale Transaction shall have been consummated.
7. The Restructuring Transactions shall have been consummated or shall be anticipated to be consummated concurrently with the occurrence of the Effective Date in a manner consistent with the Plan, the Customer Onboarding Protocol, the other Definitive Documents, and the Asset Purchase Agreement, and the Plan shall have been substantially consummated or shall be anticipated to be substantially consummated concurrently with the occurrence of the Effective Date.

**B. Waiver of Conditions Precedent**

The Debtors, with the consent of the Committee and, solely to the extent related to the Asset Purchase Agreement and the Sale Transaction, prior to the Outside Date, the consent of Purchaser, may waive any of the conditions to the Effective Date set forth in Article IX.A of the Plan at any time, without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan.

**C. Effect of Non-Occurrence of Conditions to Consummation**

If the Effective Date does not occur within 120 days after the Confirmation Date, then the Plan will be null and void in all respects, any and all compromises or settlements not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including with respect to the fixing, limiting, or treatment of any Claim or Interest, including, without limitation, the Alameda Loan Facility Claims), shall be deemed null and void, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims, Interests, or Causes of Action held by any Debtor or any other Entity; (2) prejudice in any manner the rights of any Debtor or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity in any respect.

**ARTICLE X.**

**MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

**A. Modification of Plan**

Subject to the limitations and terms contained in the Plan and Purchaser's consent rights under the Asset Purchase Agreement, the Debtors, with the consent of the Committee, reserve the right to (1) amend or modify the Plan before the entry of the Confirmation Order, in accordance with the Bankruptcy Code and the Bankruptcy Rules and (2) after the entry of the Confirmation Order, the Debtors or the Wind-Down Debtor, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein.

**B. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall constitute approval of all modifications or amendments to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

**C. Revocation or Withdrawal of Plan**

The Debtors reserve the right, with the consent of the Committee, to revoke or withdraw the Plan with respect to any or all Debtors before the Confirmation Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (1) the Plan will be null and void in all respects; (2) any settlement or compromise not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Classes of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effectuated by the Plan, and any document or agreement executed pursuant to the Plan will be null and void in all respects; and (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity, (b) prejudice in any manner the rights of any Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

**ARTICLE XI.**

**RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
3. resolve any matters related to Executory Contracts or Unexpired Leases, including:  
(a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Claims or other Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed or assumed and assigned; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;
4. ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor or the Estates that may be pending on the Effective Date;

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, and other agreements or documents created in connection with the Plan; *provided* that the Bankruptcy Court shall not retain jurisdiction over disputes concerning documents contained in the Plan Supplement that have a jurisdictional, forum selection, or dispute resolution clause that refers disputes to a different court;

7. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or an Interest for amounts not timely repaid pursuant to Article VI of the Plan; (b) with respect to the releases, injunctions, and other provisions contained in Article VIII of the Plan, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) anything that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan and the Confirmation Order; or (d) related to section 1141 of the Bankruptcy Code;

11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

13. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

14. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases with respect to any Entity, and resolve any cases, controversies, suits, or disputes that may arise in connection with any Entity's rights arising from or obligations incurred in connection with the Plan;

15. hear and determine matters concerning local, state, federal, and foreign taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

16. [hear and determine matters concerning exemptions from state and federal registration requirements in accordance with section 1145 of the Bankruptcy Code;](#)

17. ~~16.~~ enter an order or Final Decree concluding or closing the Chapter 11 Cases;
18. ~~17.~~ enforce all orders previously entered by the Bankruptcy Court; and
19. ~~18.~~ hear and determine any other matters related to the Chapter 11 Cases and not inconsistent with the Bankruptcy Code or the Judicial Code.

Nothing herein limits the jurisdiction of the Bankruptcy Court to interpret and enforce the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, or the Disclosure Statement, without regard to whether the controversy with respect to which such interpretation or enforcement relates may be pending in any state or other federal court of competent jurisdiction.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article XI, the provisions of this Article XI shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

Unless otherwise specifically provided herein or in a prior order of the Bankruptcy Court, the Bankruptcy Court shall have exclusive jurisdiction to hear and determine disputes concerning Claims against or Interests in the Debtors that arose prior to the Effective Date.

## ARTICLE XII.

### MISCELLANEOUS PROVISIONS

#### A. Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind-Down Debtor, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, exculpations, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or Interest has voted on the Plan.

#### B. Additional Documents

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Wind-Down Debtor, and all Holders of Claims and Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.



**C. Payment of Statutory Fees**

All fees and applicable interest payable pursuant to section 1930 of the Judicial Code and 31 U.S.C. § 3717, as applicable, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by each of the Debtors or the Wind-Down Debtor (or the Distribution Agent on behalf of the Wind-Down Debtor) for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first.

**D. Dissolution of Statutory Committees**

On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases; *provided*, however, that such committees will remain in existence for the limited purposes of (a) pursuing, supporting, or otherwise participating in, any outstanding appeals in the Chapter 11 Cases; and (b) filing, objecting, or otherwise participating in, any final fee applications of Professionals.

**E. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests, unless and until the Effective Date has occurred.

**F. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of each such Entity.

**G. Service of Documents**

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtors or the Wind-Down Debtor shall be served on:

Debtors

**Voyager Digital Holdings, Inc.**

33 Irving Place

New York, New York 10003

Attention: David Brosgol

General Counsel,

E-mail address: dbrosgol@investvoyager.com

with copies for information only (which shall not constitute notice) to:

Counsel to the Debtors

**Kirkland & Ellis LLP**

**Kirkland & Ellis International LLP**



601 Lexington Avenue  
New York, New York 10022  
Attention: Joshua A. Sussberg, P.C., Christopher Marcus,  
P.C., Christine A. Okike, P.C., and Allyson B. Smith

Counsel to the Committee

**McDermott Will & Emery LLP**  
One Vanderbilt Avenue  
New York, New York 10017  
Attention: Darren Azman

## **H. Entire Agreement; Controlling Document**

Except as otherwise indicated, on the Effective Date, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations with respect to the subject matter of the Plan, all of which will have become merged and integrated into the Plan; *provided, however*, that notwithstanding the foregoing or anything to the contrary herein, to the extent there is any conflict between the Plan and the Confirmation Order, on the one hand, and the Asset Purchase Agreement, on the other hand, the Asset Purchase Agreement shall govern solely in the event the Sale Transaction is consummated. Except as set forth in the Plan, in the event that any provision of the Disclosure Statement, the Plan Supplement, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

## **I. Plan Supplement**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Claims, Noticing, and Solicitation Agent at <https://cases.stretto.com/Voyager> or the Bankruptcy Court's website at <http://www.nysb.uscourts.gov>. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

## **J. Non-Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, subject to the Purchaser's consent rights under the Asset Purchase Agreement prior to the Outside Date, shall have the power to alter and interpret such term or provision to make it valid or enforceable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified

without the Debtors' consent, consistent with the terms set forth herein; and (3) non-severable and mutually dependent.

**K. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and solely to the extent permitted by section 1125(e) of the Bankruptcy Code, the Debtors, and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties nor individuals or the Debtors or the Wind-Down Debtor will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan or any previous plan.

**L. Waiver or Estoppel**

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed prior to the Confirmation Date.

| Dated: March 15, 2023

VOYAGER DIGITAL HOLDINGS, INC.  
on behalf of itself and all other Debtors

/s/ Stephen Ehrlich

Stephen Ehrlich  
Co-Founder and Chief Executive Officer  
Voyager Digital Holdings, Inc.

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Case No. 22-10943-mew  
4 Adv. Case No. 22-01133-mew  
5 - - - - - x  
6 In the Matter of:  
7 VOYAGER DIGITAL HOLDINGS,  
8 Debtor.  
9 - - - - - x  
10 VOYAGER DIGITAL HOLDINGS, INC.,  
11 Plaintiff,  
12 v.  
13 DESOUSA,  
14 Defendant.  
15 - - - - - x  
16 Adv. Case No. 22-01170-mew  
17 - - - - - x  
18 THE AD HOC GROUP OF EQUITY INTEREST HOLDERS OF VOYAGER OF  
19 VOYAGER DIGITAL LTD.,  
20 Plaintiff,  
21 v.  
22 VOYAGER DIGITAL HOLDINGS, INC., et al.,  
23 Defendants.  
24 - - - - - x  
25

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United States Bankruptcy Court  
One Bowling Green  
New York, NY 10004

March 2, 2023  
9:58 AM

B E F O R E :  
HON MICHAEL E. WILES  
U.S. BANKRUPTCY JUDGE  
ECRO: JONATHAN

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HEARING re Adversary proceeding: 22-01133-mew Voyager  
Digital Holdings, Inc. v. De Sousa Motion to extend  
automatic stay or, in the alternative, for injunctive relief  
enjoining prosecution of certain pending litigation against  
the debtors, directors and officers

HEARING re Adversary proceeding: 22-01170-mew The Ad Hoc  
Group of Equity Interest Holders  
of Voy v. Voyager Digital Holdings, Inc. et al

HEARING re Pre-trial Conference

HEARING re Motion to hold the directors personally liable

HEARING re Joinder to motion by David Stephenson

HEARING re Objection of the Official Committee of Unsecured  
Creditors to proofs of claim nos. 11206, 11209 and 11213

HEARING re Motion for an equity committee

HEARING re Joinder to motion by David Stephenson

HEARING re Motions by Alah Shehadeh  
Transcribed by: Sonya Ledanski Hyde

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WITNESSES: DIRECT: CROSS: REDIRECT: RECROSS:

MARK RENZI 53  
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 13 Disclosure Statement, Docket 863 78

MICHELLE DIVITA  
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STACEY COWEN  
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## P R O C E E D I N G S

THE COURT: Sorry for the delay.

MS. OKIKE: Good morning, Your Honor. Christine  
 Okike of Kirkland & Ellis on behalf of the Debtors.

THE COURT: Good morning.

MS. OKIKE: Your Honor, I'm pleased to be before  
 you on behalf of Voyager seeking confirmation of its Chapter  
 11 plan. Just as a matter of process, Your Honor, with the  
 Court's permission, I'd like to lay out how we'd like to  
 proceed today.

We propose starting with plan confirmation,  
 followed by the various motions filed by pro se creditors,  
 and Your Honor, in terms of the combined hearing I'd like to  
 make a few opening remarks if you permit me and will save  
 time for both the legal argument after presenting evidence.

THE COURT: Okay.

MS. OKIKE: After opening remarks, I propose then  
 to move to the evidence. We would seek to admit the four  
 declarations we filed in support of confirmation of the plan  
 and will offer up the witnesses for cross and then we would  
 move into argument if that's okay with Your Honor.

THE COURT: Okay. I have a number of questions  
 for the parties and the objectors before we have evidence,  
 just to clarify what it is we are going to need evidence on  
 so that we're -- make sure that to the extent we need

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1 evidence, we get it. I also think before we do anything  
2 else, I do have a pending motion for me to recuse myself. I  
3 ought to deal with that first, I think.

4 MS. OKIKE: Understood, Your Honor.

5 THE COURT: Is Mr. Shehadeh on the phone?

6 All right. He doesn't appear to be on the phone.  
7 I've reviewed the motion which essentially says somewhat  
8 correctly as a legal matter that if I have some reason that  
9 gives rise to bias or lack of impartiality on my part that I  
10 should recuse myself. I don't disagree with that legal  
11 principle, but I don't believe that I have anything that  
12 amounts to bias or a lack of impartiality in dealing with  
13 this matter.

14 I understand Mr. Shehadeh is unhappy with one or  
15 maybe more of my prior rulings in the case, but that's not  
16 an indication of bias or lack of impartiality. So I'll deny  
17 the motion to recuse myself and we can proceed with the rest  
18 of the hearing.

19 MS. OKIKE: Thank you, Your Honor. Your Honor,  
20 I'd just like to highlight a few points at the outset. Your  
21 Honor, the plan has garnered overwhelming support from all  
22 of the voting classes. Customers voted to approve the plan  
23 with 97 percent in number or 59,183 customers out of 61,300  
24 customers voting and 98 percent in amount representing  
25 approximately 541 million out of 552 million of those

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1 THE COURT: Am I remembering right that that's --

2 MS. OKIKE: And Your Honor, that --

3 THE COURT: That's higher than what you projected  
4 as the recovery originally --

5 MS. OKIKE: We projected 51 percent under the  
6 disclosure statement.

7 THE COURT: Okay.

8 MS. OKIKE: We also obviously have cross claims  
9 against Alameda and release --

10 THE COURT: Right.

11 MS. OKIKE: -- substantial amount of collateral in  
12 connection with the repayment of those loans, and so we  
13 don't believe the full amount, even if they were successful,  
14 would be an administrative claim.

15 THE COURT: I understand. Okay, sorry, I  
16 interrupted you.

17 MS. OKIKE: No. So Your Honor, there's almost  
18 \$1.4 billion of value that is proposed to be distributed  
19 under the Debtors' plan and there is much at stake for the  
20 company and their customers today. Your Honor, our  
21 understanding for Binance.US is that over 167,000 customers  
22 which represent approximately 75 percent of the value on the  
23 Debtors' platform have already signed up for the Binance.US  
24 platform, representing approximately 1.2 billion in customer  
25 claims.

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1 actually voting.

2 And the plan has the support of the Committee of  
3 Unsecured Creditors. General Unsecured Creditors also voted  
4 overwhelmingly to accept the plan with approximately 75  
5 percent in number and 100 percent in amount of OpCo general  
6 unsecured claims, approximately 80 percent in number and 100  
7 percent in amount of HoldCo general unsecured claims and  
8 approximately 90 percent in number and 100 percent in amount  
9 of TopCo general unsecured claims actually voting, voting in  
10 favor.

11 Your Honor, the estimated recoveries are detailed  
12 in the disclosure statement which was based off of crypto  
13 prices as of December 19th, 2022, and the value of the  
14 Debtors' crypto portfolio has increased significantly since  
15 that time. As of February 27th, we anticipate that  
16 customers will receive an estimated 73 percent recovery  
17 under the sale transaction before accounting for any  
18 recoveries on account of valuable claims that will remain  
19 with the estate including claims against 3AC, Alameda, and  
20 FTX.

21 THE COURT: And if Alameda and FTX were to succeed  
22 on their preference, what would the recovery be?

23 MS. OKIKE: Your Honor, if Alameda, FTX were to  
24 succeed on their preference, the recovery would be reduced,  
25 I believe to 48 percent under the sale transaction.

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1 Your Honor, we understand there has been a lot of  
2 frustration expressed by a handful of customers, but having  
3 lived with the company through this process, I can tell you  
4 that the management team and employees have steadfastly  
5 sought to do right by customers throughout these cases.  
6 Your Honor, I won't recite the past but suffice it to say  
7 that the Debtors were poised to exit Chapter 11 and  
8 distribute value to stakeholders in early December, just  
9 five months after commencing these cases, before FTX's  
10 catastrophic collapse.

11 While we were shocked to witness FTX's collapse  
12 and to subsequently learn that FTX appears to have been a  
13 massive fraud, the Debtors and their advisors quickly  
14 pivoted to evaluate alternative third-party transactions as  
15 well as the liquidation transaction whereby the Debtors  
16 would distribute crypto and cash to creditors on their own.

17 We spent about a month negotiating with parties  
18 who expressed interest in the Debtors' assets and ultimately  
19 determined that the bid put forth by BAM Trading Services  
20 Inc. or Binance.US represented the best path forward to  
21 maximize value. Your Honor, the Debtors' value the sale  
22 transaction as of February 27th at approximately \$1.363  
23 billion, which is comprised of \$1.34 billion of  
24 cryptocurrency on the Debtors' platform plus an additional  
25 \$20 million of up-front consideration paid by Binance.US.

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1 Your Honor, the Debtors believe that the sale  
2 transaction provides the most value currently available for  
3 the Debtors' assets and ultimately their stakeholders and  
4 the fastest route to distributing such value to customers.  
5 The sale transaction also provides the most tax efficient  
6 path forward as Binance.US will enable users to access 100  
7 percent of cryptocurrency coins on the Debtors' platform.

8 It includes the reimbursement by Binance.US of up  
9 to 15 million of the Debtors' expenses in certain  
10 circumstances and provides a 10 million reverse termination  
11 fee payable to the Debtors by Binance.US to compensate the  
12 Debtors' estates in the event they cannot consummate the  
13 transaction. The sale transaction also provides for certain  
14 other protections which are designed to minimize risk and to  
15 protect customer distributions.

16 Your Honor, the sale transaction will effectuate  
17 the expeditious sale of the Debtors' customer accounts to  
18 Binance.US, provide a meaningful in-kind recovery to  
19 creditors on the shortest timeline practical, and allow for  
20 an efficient resolution to these Chapter 11 cases.

21 Following consummations of the sale transaction, the plan  
22 provides for the orderly winddown of the debtor's estates.  
23 Importantly, Your Honor, the plan allows the Debtors to  
24 toggle to the liquidation transaction if the Debtors  
25 determine in their business judgment that the sale

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1 that the sale transaction or liquidation transaction if  
2 applicable is in the best interests of the estate; that  
3 creditors will receive more under the plan in either the  
4 sale transaction or the liquidation transaction than in a  
5 Chapter 7 liquidation; that customers in supported  
6 jurisdictions and unsupported jurisdictions are receiving  
7 equal treatment; and that the Debtors' releases are a sound  
8 exercise of their business judgment; and importantly, Your  
9 Honor, that the plan is feasible.

10 You'll have the testimony of Mr. Mark Renzi, a  
11 managing director of Berkeley Research Group and financial  
12 advisor to the Debtors regarding the primary confirmation  
13 requirements for the plan, the Debtors' liquidation  
14 analysis, the plan's feasibility, and the limitations,  
15 risks, and costs with endeavoring to make in-kind  
16 distributions to customers in unsupported jurisdictions.

17 The Debtors will put forth the testimony of Mr.  
18 Brian Tichenor, a managing director of Moelis and Company  
19 who will speak to the Debtors' sale process, the sale  
20 transaction and liquidation transaction, and that the plan  
21 was proposed in good faith.

22 The Debtors will offer in evidence the testimony  
23 of Mr. Timothy Pohl, independent director and member of the  
24 special committee of the board of Voyager Digital LLC,  
25 regarding the special committee investigation, the special

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1 transaction no longer is the best option.

2 Your Honor, the plan is a significant achievement.  
3 It consensually resolves a number of highly complex issues  
4 in a manner that is overwhelmingly supported by the voting  
5 classes. The plan is in the best interests of the Debtors'  
6 estates, is the best alternative for stakeholders, and  
7 should be confirmed.

8 Your Honor, we believe we have resolved the  
9 objections of the FTC, the Ad Hoc Group of Equity Holders,  
10 and the Bank of New York Mellon. Only eight customers out  
11 of more than one million and whose claims in aggregate total  
12 approximately 500,000, objected to the plan and we will  
13 address those objections in turn, but our view is that they  
14 do not present obstacles to confirmation.

15 The remaining objections, Your Honor, are the SEC,  
16 New York, Texas, New Jersey, and the U.S. Trustee. Your  
17 Honor, it's pretty unusual in my experience to have  
18 objectors that are not going to put forth any evidence. We  
19 have a number of governmental entities -- the SEC, New York,  
20 Texas, and New Jersey -- that have been complaining about  
21 Binance.US and the sale transaction since the conditional  
22 disclosure statement hearing back in January, but they have  
23 taken no discovery and put forth no evidence in support of  
24 their statements.

25 Uncontroverted evidence will be submitted today

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1 committee's conclusions, and the D&O settlement and in  
2 support of the Debtor releases. And the Debtors will also  
3 offer into testimony, the testimony of Mr. -- sorry -- Ms.  
4 Leticia Sanchez, a director at Stretto, who will speak to  
5 the voting report.

6 Your Honor, while we expect some of the objectors  
7 to cross the witnesses, there's absolutely no evidence in  
8 support of their objections. So what are they asking the  
9 Court to do? They're asking you to pick apart the plan  
10 including the sale transaction to say let's just modify some  
11 parts they don't like and we'll go with the rest of them.  
12 But that's not the plan the Debtors are prosecuting. The  
13 Debtors have exclusivity.

14 We've proposed this plan in good faith and it has  
15 been resoundingly accepted by creditors and the objectors  
16 can't pull out specific parts they don't like, especially in  
17 this case where we have a highly complex transaction that  
18 will need to be executed in either the sale transaction or  
19 the liquidation transaction scenarios.

20 Your Honor, we'll have much more legal arguments  
21 at the back at the end of the hearing, but wanted to just  
22 provide these preliminary comments.

23 THE COURT: Okay. Can I just ask for some  
24 clarifications of some things before I ask some other  
25 questions? I see that you filed stipulations with FTX and

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Alameda and also last night, a stipulation with various governmental entities. Are approvals of those contemplated today or at a different time and are they conditions to confirmation or not?

MS. OKIKE: Your Honor, they -- we are not seeking approval of either of those today. The stipulation with the governmental entities is purely consensual. They are agreeing to two things. They're agreeing, one, at the -- their claims that they had to the extent that they are allowed at the OpCo entity, will be subordinated to those general unsecured creditors at that entity and also account holders. And they're also agreeing that the claims that they filed at the Top entity and the HoldCo entity, to the extent that they are allowed and they receive a recovery on account of those claims, will be contributed to the benefit customers.

THE COURT: Isn't that gifting or a Jevic issue to contribute them only to that particular class, resulting in different recoveries for that class and the general unsecureds?

MS. OKIKE: Your Honor, they're entitled to those recoveries and I think they're entitled post effective date to give the recoveries to whoever they would like to.

THE COURT: Second Circuit says no. It says no gifting, doesn't it? Says if it's given up for the benefit

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a violation. And so, although they have said you can make the distributions, there's not the ability, my understanding is on the Binance.US platform, to restrict trading to specific types of cryptocurrency and so there is not the ability to effectuate what Texas was requesting.

Although we're still in discussions with them and hopefully to get to a conceptual resolution similar to Vermont, it's going to require a more creative solution than what they had proposed.

THE COURT: And where does Hawaii stand in all of this? They were unsupported jurisdiction. I haven't heard anything from them.

MS. OKIKE: Your Honor, our understanding is that Hawaii, there have been productive discussions with Hawaii and they are likely to follow Vermont. They were waiting to kind of, my understanding, is to see the resolution with Vermont, but we anticipate and I know Binance can speak to this a little bit better. We anticipate that they will sign on to that same structure.

THE COURT: Okay. And where do things stand as to how the VGX token will be treated?

MS. OKIKE: So Your Honor, the VGX token will be treated like all of our coins on the Debtors' platform. Those holders will be entitled to their pro rata distribution of VGX which they will be able to, you know,

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of the estate, it's got to be distributed in accordance with the bankruptcy priorities. If you think otherwise, just alerting you to -- I'm not going to rule on it today, but you need to address that as an issue for me.

MS. OKIKE: Understood, Your Honor.

THE COURT: Okay. So the -- I saw that there's an amendment to the asset purchase agreement to preserve more preference claims and also as I understand it to make clear that Vermont is not going to be treated as an unsupported jurisdiction; is that correct?

MS. OKIKE: That's correct, Your Honor. We have reached an agreement with Vermont and we are hopeful that there may be other states as well of the remaining unsupported states who sign on to that, but Vermont will not be considered an unsupported jurisdiction.

THE COURT: You continue to treat Texas as having objected, but I thought from reading the Texas submission that they thought that you didn't need any more regulatory approval to do the -- at least the additional distributions that you contemplate.

MS. OKIKE: Your Honor, that's not exactly true. In Texas, they believe that stable coins are securities and so they would, I believe to the extent that stable coins were traded, which would potentially happen to the extent that people receive distributions, they consider that to be

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withdraw from the Binance platform. Binance.US has agreed to submit the VGX token through it's, you know, internal processes to see if it's approved to be listed on the exchange. We obviously don't know what the outcome of that will be, but just like any other customer, VGX holders will receive their pro rate distribution, will be able to remove that distribution from the platform.

THE COURT: So if I -- and I always want to double check my understanding of how this works. Customers' claims are based on values of tokens as of the filing date.

MS. OKIKE: Correct.

THE COURT: Customers' distributions will be in kind, but based on current dollar values of the various coins.

MS. OKIKE: Correct.

THE COURT: And so that everybody -- what everybody receives may be in different form, will be calculated as being the same proportion of their prepetition claim. So how will VGX be valued for purposes of distribution?

MS. OKIKE: It will be valued the same as all other coins. So it has a price. It's traded.

THE COURT: What is the current VGX price?

MS. OKIKE: Thirty-three cents, Your Honor.

THE COURT: And if Binance does not -- what's

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1 that?

2 MS. OKIKE: Thirty-nine cents, Your Honor.

3 Apologies.

4 THE COURT: It's all right. If Binance does not  
5 do what you hope it does to allow for the trading of VGX on  
6 its platform, what happens to VGX?

7 MS. OKIKE: Yes. So there are smart contracts,  
8 Your Honor, which underline the token and is really what  
9 provides utility to the token. Those are not being sold to  
10 Binance.US in the transaction. We are actively speaking  
11 with third parties who are interested in purchasing the  
12 smart contracts and I anticipate we likely will have a  
13 transaction at some point for somebody who intends to  
14 provide utility to the token going forward.

15 And so the value of the VGX token post-closing  
16 will really be, you know, determined by the utility of the  
17 token. I will say, you know, some of this stuff isn't  
18 intuitive. I mean, we've seen huge rises in the price of  
19 VGX over the past month or so, so you know, utility or no,  
20 we don't really know what the price will be going forward.

21 THE COURT: Okay. I see there are changes that  
22 have been made over the last week or so. Winddown entity  
23 has been changed to the winddown Debtor. You'll have a plan  
24 administrator now, and I see the winddown Debtor is actually  
25 going to be HoldCo, not OpCo?

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1 THE COURT: Go ahead. What is your question? I'm  
2 sorry, whoever just said they wanted to ask a question, what  
3 is your question?

4 Okay. We'll go back to my questions for the SEC.  
5 You are?

6 MR. UPTEGROVE: Good morning, Your Honor. William  
7 Uptegrove on behalf of the United States Securities and  
8 Exchange Commission and with me is my colleague Therese  
9 Scheuer.

10 THE COURT: Good morning. You've submitted an  
11 objection that has a couple of parts and one part is that  
12 you think that the contemplated transfers of  
13 cryptocurrencies by Voyager may be illegal. I'm sort of  
14 unaccustomed to getting objections that something may be  
15 wrong as opposed to either is or isn't. So what exactly is  
16 your position here? Are you saying that it is wrong or that  
17 you don't know?

18 MR. UPTEGROVE: We're saying, Your Honor, that  
19 there are risks inherent in transactions in any crypto asset  
20 transactions. There are fact specific issues that go into  
21 that. They're highly complex. And those risks are always  
22 going to be apparent. On the issue of the securities laws,  
23 the SEC is not taking a position on whether any of the  
24 transactions in the plan are violative of the federal  
25 security laws. We can't take a position at this point.

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1 MS. OKIKE: That's correct, Your Honor. I mean,  
2 these are changes that are really designed to preserve tax  
3 attributes and make sure that the structure is as tax  
4 efficient as possible. It's not designed to kind of change  
5 the rights of any creditors with respect to distributions or  
6 with respect to the intercompany claims disputes that are  
7 unresolved.

8 THE COURT: Okay.

9 MS. OKIKE: And Your Honor, I didn't answer your  
10 question with respect to FTX Alameda. We're not going  
11 forward with that today. We filed that motion, I believe  
12 it's -- don't know the date it's set for hearing, but in  
13 accordance with the rules, we provided the appropriate  
14 notice. We don't believe that's a bar to confirmation. It  
15 really just deals with the value of distributions under the  
16 plan.

17 THE COURT: Okay. All right. Thank you very much  
18 for those clarifications. Before we actually get to  
19 evidence, I just have some questions for some of the  
20 objectors, okay?

21 MS. OKIKE: Yes, Your Honor.

22 THE COURT: I want to start with the SEC. Are  
23 they here?

24 MR. WARREN: Your Honor, this is Jon Warren, pro  
25 se creditor. Had a quick question for you.

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1 The SEC is a deliberative body, Your Honor and its  
2 processes a nonpublic one by federal law. And that process  
3 is protected by a number of statutes. Just because private  
4 litigation --

5 THE COURT: Deliberative is one thing. Absent is  
6 another. I mean, how long has Voyager been around? How  
7 long has it been selling the tokens that it's been selling?  
8 How long has Binance been around? Come here and tell me  
9 that you don't have any idea, but that I should stop  
10 everybody in their tracks because you might have an issue  
11 that you haven't gotten around to looking at; it's kind of a  
12 weird objection, isn't it?

13 MR. UPTEGROVE: I don't think so, Your Honor. I  
14 think that this happens. There's also the CFIUS review,  
15 which is something similar, Your Honor. Do all regulatory  
16 bodies have to stop everything they're doing when a private  
17 party enters into a lawsuit or files a bankruptcy plan and  
18 have to come to Court --

19 THE COURT: Well, it's hardly the bankruptcy  
20 that's triggered your potential review of this, isn't it?  
21 You're claiming that there might be things going on here for  
22 years that may be in violation of the securities laws.  
23 Deliberative is one thing. What have you done? Have you  
24 looked at any of this? You're not willing to take a  
25 position on any of it?

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MR. UPTEGROVE: No, Your Honor, we're not taking any position on whether or not any transaction -- there are lots of transactions. There's the rebalancing transactions and there's the sale transactions and then there's going to be transactions after that. They all have, I think -- I don't recall the exact number, but there's something like over 100 cryptocurrencies or crypto assets, I believe on the -- were on the Voyager exchange.

All of those have different attributes, they all have to be viewed independently. And so whether something is a security or not is a complex issue. There's no facts before the Court today about any of those issues, nor does there need to be because it's not, you know, whether or something is a compliant, whether the plan or transactions contemplated in the plan are compliant with non-bankruptcy law is not the issue that needs to be decided today. At least the SEC doesn't need to provide a position. It's the -- and disclose its deliberative process in an open Court.

The issue today is whether or not the plan is confirmable. That's a burden that the Debtor has and we at the very least seek full disclosure about possible risks attendant to the transactions contemplated under the plan.

THE COURT: But you've also argued that the Debtor has to somehow prove a negative here, has to prove that every one of the transactions, every one of the

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come in here and say the Debtor should prove the impossible. The Debtor should somehow, without any guidance from you as to what issues you think the Debtor needs to prove, the Debtor should somehow prove that nothing that's going on here raises an issue under the securities laws without even a contention by anybody in the room, or at least not from you, that what the Debtor is doing does violate the securities laws. I just don't get how that's proper or how you would expect anybody to be able to comply with what you're asking.

What is it you -- how is the Debtor supposed to do what you're asking them to do? Are they supposed to give me a tutorial on all aspects of every coin that -- in which the Debtors -- that the Debtors might be selling here and try to think about every single possible argument you might make as to each individual coin, even though you don't have arguments about those coins? Is that what you're asking us to do today?

MR. UPTEGROVE: No, Your Honor, but we do believe there should be more disclosure than there is in the current disclosure statement and plan.

THE COURT: There is disclosure about regulatory risks, you know, and so, I don't know, you haven't been specific. All you've said vaguely is that there might be an issue. Well, that's pretty much what the Debtor said. I

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cryptocurrencies that it might be selling do not involve transactions in securities with no guidance from you at all as to what might constitute a security, which coins they have to do that proof on, why you think any of them are securities, and no indication at all of what legal or factual issues the testimony and argument today ought to address. How is that a proper objection?

MR. UPTEGROVE: Again, Your Honor, we are raising the issues. There are risks attendant to the transactions in the plan. We are in no position to be able to provide the facts you just talked about or issue an advisory opinion on whether or not any particular transaction complies with the security laws.

THE COURT: I'm not asking for your -- an advisory opinion. I'm asking you to either object or not object. What you've said is not really an objection. It's sort of like, hey, Judge, we don't know, so you shouldn't do anything. That's essentially what you've said.

MR. UPTEGROVE: And it's incumbent upon the Debtors to explain and disclose the potential risks of what would happen.

THE COURT: You know, when I have a regulator who's charged with protecting investors, they either think there's an issue or there's not. I expect them to come in and tell me there is or there isn't. I don't expect them to

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don't know how they can be any more specific when you're standing here and you're not willing to be any more specific.

MR. UPTEGROVE: Your Honor, again, we can't take a position on whether or not a specific transaction is violative of the security laws. As we said, there may be risks. There are risks for sure and there may be violations of the securities laws. It's just not something that we believe is, you know, we need to opine on here.

THE COURT: But you've --

MR. UPTEGROVE: The burden is not on us.

THE COURT: But you have not just raised this as a disclosure issue. You have said that this somehow affects the feasibility of the plan and that I should deny confirmation. I should deny confirmation essentially because you might have some unspecified issue about which you cannot take any position today. That's essentially what you've asked me to do. How does that make sense?

MR. UPTEGROVE: We've also said the same thing about the CFIUS review is that's another thing that's out there that is very much like the potential violation of the securities laws that could impact the plan, the consummation of the plan. There's no disclosure about what will happen if there's a negative -- I have not seen disclosure, what would happen if the plan closed or the -- excuse me, the

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deal closed and there was a subsequent negative finding by CFIUS. I think it's a similar thing.

THE COURT: I don't think it's similar at all. CFIUS review is triggered by this specific transaction. Your objection is based on stuff Voyager has been doing for years and stuff that Binance has been doing for years. I mean, are you standing here telling me that the SEC is going to challenge whether the Debtor is selling securities?

MR. UPTEGROVE: Not today, Your Honor, but there's --

THE COURT: Are you telling me that you're going to challenge whether Binance is acting as a securities broker?

MR. UPTEGROVE: Your Honor, with respect to Voyager, the Voyager entities, we've disclosed that there is an ongoing investigation involving Voyager. So that's an issue that has yet to be determined. Again, we're a deliberative body. There's no reason, no law that would require us to -- in fact, there's laws to the contrary that you know, that's a nonpublic process.

And as to other entities, you know, that's just not before the Court. That's not one of the issues that needs to be, you know, that the government has the burden to show.

THE COURT: Well, but you've said in your papers,

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securities laws.

THE COURT: Why wouldn't Section 1145 of the Bankruptcy Code apply to the distributions contemplated under the plan?

MR. UPTEGROVE: I don't think that Debtor is invoking 1145. I don't think it would be -- they're not issuances. I don't believe 1145 applies, Your Honor.

THE COURT: You don't think any of these are -- the Debtor would be the issuer of the security?

MR. UPTEGROVE: I don't think they are. No, Your Honor. I think these are --

THE COURT: But in your footnote, that's exactly what you suggested as to VGX. My colleague, Therese Scheuer may want to address that.

MS. SCHEUER: Good morning, Your Honor. For the record, Therese Scheuer for the Securities and Exchange Commission. Your Honor, I don't believe the Debtors are seeking 1145 treatment for any of the distributions for the rebalancing. It has not been cited in their papers and it has not been briefed, to my knowledge.

THE COURT: Well, do the Debtors have to invoke it? Doesn't it just automatically apply?

MS. SCHEUER: There has to be showing it is a limited exemption from registration and there are particular requirements that must be met.

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it's an issue that has to be proved. And yet at the same time, you want to just say the government takes no position.

MR. UPTEGROVE: Your Honor, we're not in a position to -- you said earlier that, you know, what could the Debtor say. They could say all types of things to prove or to show that notwithstanding whether there is a violation or there is not, that the plan is feasible. You could put on evidence about how you would exactly do it, what witnesses and what those witnesses would say and what exhibits. I cannot tell you that's not the SEC's role. That's the role of the Debtor to come in and say, Your Honor, this is the test for feasibility.

On the one hand, if there's no action by the SEC in the future, then there's no action by the SEC in the future. If there is one, this would be the possible ramifications and notwithstanding that, the plan is feasible.

THE COURT: The argument about whether transactions in particular cryptocurrencies are transactions in securities, are you making that argument only as to the rebalancing trades or as to the distributions that the Debtor would make under the plan?

MR. UPTEGROVE: I think that that's to be determined and any transaction in an asset that is a security, you know, would fall under the ambit of the

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THE COURT: Well, that's exactly the argument you made, that VGX was somehow an unregistered security of the Debtors. So why wouldn't 1145 apply to that?

MS. SCHEUER: Your Honor, it hasn't been briefed and I don't believe that ----

THE COURT: What hasn't been briefed?

MS. SCHEUER: The 1145 issue has not been briefed. It's not -- I don't believe it's ripe for discussion today and I don't believe the Debtors included it in their papers.

THE COURT: All right. As to whether Binance is operating as a securities broker, are you saying that in performing the transactions contemplated by this plan, Binance might be operating as a securities broker or are you saying that it might be engaged in other activities that make it a securities broker?

MR. UPTEGROVE: Your Honor, other than what we said in our papers, we're not in position to expound upon what a particular entity, you know, may or may not have done and what the consequences legally are regarding that conduct.

THE COURT: Even if Binance were engaged in some other activity in some other context that arguably made it a securities broker, why would that affect its ability to do what we're contemplating here?

MR. UPTEGROVE: You know, as a hypothetical, Your

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1 Honor, if it were found to be a unregistered exchange, there  
 2 would be consequences to -- I'm not familiar with all the  
 3 consequences, but it would -- you know, potentially there's  
 4 registration. I mean, there's -- and I don't know the  
 5 answer to that because I'm -- although I work for the SEC, I  
 6 am not an expert in that area. I think that the Debtor has  
 7 hired legions of lawyers and they probably do have experts  
 8 in that area and they could address the issue as if, Binance  
 9 worst case scenario, Binance is found to be a unregistered  
 10 exchange, these would be the consequences and it wouldn't  
 11 have an impact on the plan.

12 THE COURT: Those people would just be opining  
 13 about what you would likely do and what you would likely  
 14 insist on. How can they know more than you do about that?

15 MR. UPTGROVE: I don't think it's a matter of  
 16 knowing, Your Honor. It is facts and circumstances and I  
 17 mean, I would think, you would do the same thing -- and you  
 18 know, the tax realm is, you know, the Debtor makes  
 19 determinations about tax issues and then, you know, post  
 20 plan, the IRS or a Court may have different views than the  
 21 Debtor, but that doesn't preclude the Debtor to the extent  
 22 there is an issue that relates to the code or confirmation  
 23 of addressing potential tax issues. We just addressed tax  
 24 issues --

25 MR. SHEHADEH: Judge Wiles, I'm here to ask

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1 extend -- and these issues would not go away. Obviously  
 2 that's the point I just made, but as to feasibility, you  
 3 know, except to the extent there were parts of the self-  
 4 degradation plan that were, you know, potentially violative  
 5 of the law and the --

6 THE COURT: Well, on disclosure, I read -- reread  
 7 the disclosure statement and it does say that there are  
 8 risks that we don't know what's going to happen with  
 9 regulation, that there is increasing regulation that could  
 10 affect the ability to close the deal. I don't see how I  
 11 could in hindsight, say that the Debtors had to be more  
 12 specific about those risks given what you're telling me  
 13 today.

14 MR. UPTGROVE: It also may be the case, Your  
 15 Honor, that the plans confirm, you know, in a hypothetical  
 16 world, plan is confirmed, the deal closes, and then, you  
 17 know, again, we're not in a position to just to say this is  
 18 hypothetical, but then there's some action by the SEC or  
 19 another regulator or government body that has some impact  
 20 that would -- so the toggles over feature is over.

21 They've toggled -- it toggles to the restructuring  
 22 plan and then some action happens that requires the, you  
 23 know, an additional reorganization and additional  
 24 liquidation because of the place the Debtor finds itself.  
 25 So the toggle, you know, I'm not saying that -- I think part

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1 (indiscernible), Your Honor.

2 THE COURT: Who was talking there?

3 MR. SHEHADEH: I believe, Your Honor, you  
 4 addressed me at 10:01. I was having technical issues. Now  
 5 I'm able to speak.

6 THE COURT: Okay, but just wait. We're in the  
 7 middle of something else at the moment, okay? All right,  
 8 we're talking to the attorney for the SEC. So you couched  
 9 these objections in terms of feasibility. Feasibility is  
 10 just a shorthand way of referring to the provisions of  
 11 Section 1129(a)(11) which requires a showing that the plan  
 12 is not likely to be followed by the liquidation or the need  
 13 for further financial reorganization of the Debtor unless  
 14 such liquidation or reorganization is proposed in the plan.

15 So in this case, there is a toggle feature in the  
 16 plan under which the Debtors will switch to another approach  
 17 if the Binance deal can't close within four months. So even  
 18 if you're right about all your objections and you surprise  
 19 us all with regulatory actions that after confirming a deal,  
 20 we suddenly can't close by -- that wouldn't actually be a  
 21 feasibility issue, would it? It would just mean the Debtor  
 22 would talk to the other plan.

23 MR. UPTGROVE: It may, Your Honor, but I think  
 24 there would still need to be at this juncture disclosure  
 25 about the inherent risks of the transaction. And to the

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1 of our point is, it's not as if this all goes away at  
 2 confirmation. These are things that will continue and they  
 3 may continue after the toggle feature is no longer an  
 4 option.

5 THE COURT: Well, if the toggle feature is no  
 6 longer an option, it would only mean that the Binance deal  
 7 had already closed. So how does any of that affect the  
 8 feasibility of the plan if something were to come up at a  
 9 later stage?

10 MR. UPTGROVE: I think at the very least, it  
 11 would have ramifications for creditors. And I think the  
 12 test is -- maybe I'm misremembering it -- but it's that,  
 13 that under 1129, that for feasibility that the restructuring  
 14 will not be followed by, you know a further need for  
 15 liquidation. That could still happen after the closing.

16 THE COURT: Of this Debtor?

17 MR. UPTGROVE: Potentially, if --

18 THE COURT: This debtor will have already  
 19 liquidated. Okay. You also asked about whether the  
 20 disclosure statement has sufficient information about  
 21 Binance's controls, custody arrangements, and finances. The  
 22 SEC, the U.S. Trustee, Texas, and New York all made similar  
 23 arguments in that regard. And you argued that you think we  
 24 need to know if third parties have access to the keys, what  
 25 safeguards there are to stop assets from being transferred

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off the Binance.US platform, and a declaration from Binance about its internal controls. Are the Debtors going to offer evidence on any of these points today? Yes?

MR. UPTEGROVE: We intend to, Your Honor, yes.

THE COURT: Do you have any evidence on these points that you want -- or plan to offer today?

MR. SLADE: No, Your Honor, but it's not our burden.

THE COURT: You know, maybe not, but it's a disclosure issue and I'm absolutely shocked, I have to say, that a regulator would come in and say, I'm charged with regulatory authority over these things. These are reasons that I have concerns because they're within my regulatory jurisdiction, but I've done nothing. I have nothing to offer to you except questions, and my excuse for that is that it's somebody else's burden in the context of confirmation. That's incredible. Absolutely incredible.

So I'll hear whatever evidence the Debtor has, but you know, I get the feeling that this objection has been made as a kind of cover yourself, so you can say later that well see, we raised these issues, but you haven't really. You've done nothing. You know, I'm trying to do the right thing here. I would like to do the right thing. I don't want to subject customers to any risks. They've already been through a bankruptcy. I don't want to put them through

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Okay? I understand the concerns, but at the same time, I'm in a position where we don't usually assume that buyers are bad actors. We don't usually assume that people are bad just because other people in an industry are bad. So if there are reasons to be concerned here and worried, I need to know specifics. So kind of telling me, gosh, there's lots of problems in this industry, so you better figure it out, Judge, without offering any help, is really disappointing.

Okay. So as to the United States Trustee, I just want to make -- thank you. As to the United States Trustee, you had an objection on disclosure about how the cryptocurrencies will be held before they're distributed. The Debtors, I thought we had resolved this when I -- at the time we approved the asset purchase agreement and the Debtors have made responses at Pages 78 through 79 with their memorandum in support of confirmation. Does that answer your questions or do we need anything further on that?

MR. MORRISSEY: Your Honor, Richard Morrissey for the U.S. Trustee, and before I begin, it's nice to see Your Honor in person after three years. The U.S. Trustee's objection generally had to do with disclosure in the disclosure statement itself so that the creditors could be fully informed about what they were signing onto with the

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any more issues.

But to stand here and tell me, Judge, you know, I'm not going to tell you what we're going to do, but it's your job and the Debtors' job to kind of guess and to make predictions, and you know, you better be right about it; that's really not helpful.

Okay. All right. So I'll hear whatever evidence we have on that. I have to say that the disclosure objections on this point, I'll hear argument later, but they don't really strike me as really disclosure issues. They strike me as substantive objections kind of masquerading as disclosure issues. They are more in the lines of not so much that the Debtor knows something that the Debtor didn't reveal as that well, the Debtor should be getting more information from Binance and should be getting more control information from Binance, and then should be disclosing it.

Well, that's really not so much an issue about the disclosures the Debtors have made as a question of, should the Debtors be doing more in the interests of customers before we go forward with the transaction. So I'll hear what people have to say about it. I'm concerned about these points, too. Anybody who's been following what's happening in this industry, who sees what happened with FTX, who sees the examiner's report about what was going on in Celsius, you have to be worried.

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Binance transaction.

One of those aspects as Your Honor mentioned had to do with the protection of the cryptocurrency. What the disclosure statement said was essentially, it's protected. They -- I believe there was a link to a website and the creditors were invited to sort of look it up. And the Debtors did more than that. They also did their due diligence. Mr. Tichenor's declaration filed the other day went into the fact that they had done their due diligence and I believe the Committee did due diligence as well.

But the information should have been, the U.S. Trustee believes, should have been in the disclosure statement itself so that they could evaluate it. And we have a contrast, Your Honor, between this and what Voyager itself did in terms of describing the measures it took to protect the cryptocurrency.

As Your Honor will recall undoubtedly I know counsel for the Debtor will definitely recall, we had a long cash management process. A lot of time elapsed between the time the motion was originally filed and the time we finally got a final order on that, but the logjam was cleared by the declaration submitted by Voyager describing exactly what it was that the -- that Voyager was doing to protect the cryptocurrency.

And then the Committee, for its part, filed a

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statement basically supporting what they did. That stands in marked contrast to what the disclosure statement did. So I don't know what's going to be put forth today, Your Honor, on that and other disclosure issues but our argument was simply that if the creditors were going to be fully informed what it was that they were signing up for by voting in favor of the plan, there should have been more disclosure right there in the disclosure statement.

Your Honor, I know this is a little apart from the question and I can bring this up later if you want, just to add -- just a comment about the voting and the effect of certain things on recovery. If you'd like to hear it now, it's about one or two sentences on each thing.

THE COURT: About the voting?

MR. MORRISSEY: Yes. Your Honor, as Ms. Okike said, the voting was 97 percent number, et cetera, voted yes and that is true and that is also what is relevant in determining whether there is sufficient voting in favor of a plan for a plan to be confirmed. But to put the matter in some perspective, I believe -- and Ms. Okike can correct me if I'm wrong on this, but of the eligible creditors only 6 percent of them voted. So it's a small segment, but again, I understand of course, that under the Bankruptcy Code, the 97 percent number is the relevant number.

The other issue, Your Honor, has to do with what

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Office on behalf of the Texas State Securities Board and the Texas Department of Banking. Your Honor, we are continuing to work with the Debtor and Binance to see if we can find a way that Texas citizens will not be treated as a nonconsenting jurisdiction. We're not there yet. We are continuing those discussions in good faith and we'll continue to do so.

Before we get started though, one thing I wanted to clarify is that the language that has been inserted at Paragraph 141 through 142, we are not in agreement with that language, Your Honor, the State of Texas isn't, but we are continuing through this hearing to discuss language that could be agreeable. I just wanted Your Honor to be aware of that. Thank you, Your Honor.

THE COURT: Paragraphs 142 of what, the confirmation order? Is that what you're talking about?

MS. RYAN: Yes. Yes, Your Honor, the confirmation order.

THE COURT: Okay. Well, as I've said many times, I tried to read everything, but I didn't get to the confirmation order because I ran out of gas. I did read everything else, but --

MS. RYAN: I understand running out of gas, Your Honor. And again, we'll continue to discuss this language with the Debtor throughout the hearing and hopefully we'll

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may affect recoveries. I believe Ms. Okike explained how the disposition of the Alameda issue may affect recoveries, but I believe there's something else which is intercompany transactions. And we have counsel here on that, not only Ms. Okike but Mr. Kirpalani as well and the result of the litigation concerning the intercompany transactions, I believe, can affect the distributions to creditors under the plan as well.

I don't know the numbers. Perhaps Ms. Okike does, but I just wanted to point those things out to the Court.

THE COURT: Okay.

MR. MORRISSEY: Anything further, Your Honor?

THE COURT: Not at this stage. I may have questions for you later.

MR. MORRISSEY: Thank you, Your Honor.

THE COURT: All right. I think we have an idea of what we need to do with the evidence, so unless there's further points that people want to raise before we go to the witnesses, we'll take the evidentiary submissions.

MS. RYAN: Your Honor, this is Abigail Ryan with the Texas Attorney General's Office. If I may be heard briefly?

THE COURT: Yes.

MS. RYAN: Thank you, Your Honor. Again for the record, Abigail Ryan with the Texas Attorney General's

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reach an agreement, but that's the status with Texas as of right now.

THE COURT: All right, thank you.

MS. RYAN: Thank you.

MR. SLADE: Good morning, Your Honor. Mike Slade, Kirkland & Ellis, for the Debtors. We filed our witness and exhibit list at Docket No. 1129 because we thought it would make it easier for people to follow the hearing and all of the exhibits that might be used are on the docket as well.

Our first witness just to get just out of the way, I would just like to offer our voting declaration, which is the declaration of Letty Sanchez, Exhibit 4 on our witness list. It's also on the docket at Docket No. 1127 and I would offer that declaration into evidence and Ms. Sanchez is here and available to cross examine.

THE COURT: This is the amended declaration?

MR. SLADE: That's correct, Your Honor.

THE COURT: All right. Are there any objections to the admission of the amended voting declaration into evidence? Does anyone wish to cross examine the declarant as to the substance of that declaration? Okay.

MR. NEWSOM: I would, Your Honor. Can I elaborate more on that amended, whatever, declaration? What is that basically saying?

THE COURT: I couldn't understand what you just

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1 said, I'm sorry.

2 MR. NEWSOM: Can they elaborate more on that, like  
3 what is that explain, they're doing for us.

4 THE COURT: This is the declaration as to what the  
5 ballot results were, how many people voted in favor of the  
6 plan, how many people voted against the plan.

7 MR. NEWSOM: What about when -- what about the  
8 people who didn't vote? Is that -- the people that didn't  
9 vote, is that considered a yes in favor of it if they didn't  
10 vote at all or --

11 THE COURT: Under the Bankruptcy Code, the plan is  
12 deemed to be accepted if it is accepted by certain  
13 percentage of the people who actually vote one way or the  
14 other. Okay? So we only look at the people who actually  
15 voted for or against, and if among those people, the plan  
16 was accepted by the requisite percentages in number and  
17 amount, then the plan is deemed to be accepted by that  
18 class. Okay? So the fact that some people don't vote at  
19 all under the Bankruptcy Code is a fact that's ignored.  
20 Okay?

21 MR. NEWSOM: I don't find that to be -- I don't  
22 find that to be fair voting, Your Honor.

23 THE COURT: Well --

24 MR. NEWSOM: -- the plan have to do -- what did  
25 the plan have to do -- the opt-out release and what does it

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1 winddown in effect at that time? That's not really right  
2 now, you know, right now we --

3 MR. NEWSOM: Yeah, I would like to see a report if  
4 they can revise a report as who voted yes and who voted no  
5 and who didn't vote, if that's possible.

6 THE COURT: You want to see by name who voted?

7 MR. NEWSOM: I mean, they can redact that  
8 information. They can say creditor one, creditor two,  
9 creditor three, yes, no, yes, no (indiscernible).

10 THE COURT: It's actually already on --

11 MR. NEWSOM: (indiscernible).

12 THE COURT: It's already on file on the public  
13 docket. There's a lengthy attachment --

14 MR. NEWSOM: Yeah, which was done by the Debtors.  
15 Which was done by the Debtor, which we know we don't trust,  
16 because, you know.

17 THE COURT: Okay. All right. I've heard your  
18 objection. I'll admit the declaration into evidence. Is  
19 there any cross examination of the declarant that anybody  
20 wishes to do? Okay. Do you have other evidence from that  
21 witness that you wish to offer?

22 (Declaration of Leticia Sanchez entered into  
23 evidence)

24 MR. SLADE: No, Your Honor.

25 THE COURT: Okay. Very good.

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1 have to do with releasing third parties from any type of,  
2 like, you know, charges or anything that would come about  
3 later on?

4 THE COURT: Well, it actually has nothing to do --

5 MR. NEWSOM: Why --

6 THE COURT: It has nothing to do with the opt-out,  
7 with the opt-in release. If somebody didn't vote, they're  
8 not releasing their own claims unless they have separately  
9 affirmatively elected to do so. And as to whether this way  
10 of doing the voting is fair, I'm afraid you'll have to take  
11 that up with Congress. It's not something I have any  
12 control over. It's a very clear provision in the Bankruptcy  
13 Code itself.

14 MR. NEWSOM: Are you going to (indiscernible) once  
15 the plan, a voting plan (indiscernible)?

16 THE COURT: I'm sorry?

17 MR. NEWSOM: Why was there a plan when FTX  
18 (indiscernible) and if that didn't go through, why was there  
19 a winddown effect at that time?

20 THE COURT: Well, that's not really -- right now,  
21 you know, right now we're not just kind of opening the floor  
22 to general question. Right now, the question is whether  
23 there's any objection to the admission of the declaration as  
24 to what the voting results were. Okay? extra. I'm sorry.  
25 Well, is there a plan when they're -- and go through, wasn't

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1 MR. SLADE: Your Honor, our next witness, we would  
2 call Mark Renzi. He's the financial advisor to the Debtors.  
3 His declaration is Exhibit 1 on our witness list and we  
4 would offer that. It's also on the docket at Docket No. 111  
5 -- it's on the docket at 1119. We would offer that. Mr.  
6 Renzi is here and available for cross examination.

7 THE COURT: All right. Are there any objection to  
8 the admission of Mr. Renzi's declaration into evidence? All  
9 right.

10 MR. HENDERSHOTT: Your Honor, Tracy Hendershott,  
11 Your Honor, pro se creditor. Is there any way we can get a  
12 continuation to be able to review all of these declarations?  
13 There's literally hundreds of pages of documents that were  
14 just submitted within 48 hours, unlike the professional  
15 organizations, us creditors do not have an army of lawyers  
16 to review all of this stuff and I thought the standards were  
17 that we needed a week before any hearing of submission of  
18 any type of documentation for us to digest, review, and  
19 actually formulate questions and whether that's with  
20 testimony or against the filings themselves.

21 MR. NEWSOM: I'm in support of that.

22 THE COURT: All right.

23 MR. HENDERSHOTT: This has been actually a trend,  
24 Your Honor. Excuse me. Sorry. It's hard without visuals  
25 of us being in person, but I don't intentionally mean

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1 interrupt in any means, but this has actually been a trend  
2 throughout this entire case starting right with the first  
3 plan and disclosure meeting where the Debtors in Possession  
4 submit almost 1,000 pages the day before. There's no way  
5 that us as pro se creditors are able to digest that in any  
6 form whatsoever. And that continues to this very day.

7 THE COURT: Counsel?

8 MR. NEWSOM: (indiscernible).

9 MR. SLADE: Your Honor, we did file Mr. Renzi's  
10 declaration two days ago along with our reply, consistent  
11 with the deadlines that were set by the Court on Tuesday and  
12 if Mr. Renzi's declaration weren't admitted, we would be  
13 calling him to testify and he would say the same things that  
14 are in his declaration. So I don't think that's an  
15 objection to the admission of the actual document, so we  
16 would ask Your Honor to overrule the objection and admit the  
17 declaration. And any questions they can ask of Mr. Renzi on  
18 cross examination.

19 MR. HENDERSHOTT: Your Honor, I disagree. I've  
20 had absolutely no time or ability within the 48 hours of  
21 being flooded with, you know, numerous submissions to be  
22 able to review and even intelligently ask a question. I  
23 guess the question I'm asking, is there not a standard that  
24 one week before the hearing is the cutoff for submission of  
25 documentation to be discussed at that hearing?

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1 objected matters, let's just go ahead and do that live.

2 Okay?

3 MR. SLADE: Happy to give it a shot, Your Honor.  
4 I think one of the struggles as Your Honor experienced with  
5 the two objectors that you spoke to, it's not entirely clear  
6 what disputed issues are, but we will certainly give it a  
7 shot.

8 THE COURT: Okay, so the declaration is admitted  
9 as to compliance with various provisions of the Bankruptcy  
10 Code that haven't been contested and to the extent that Mr.  
11 Renzi has any testimony to offer on subjects of -- to which  
12 objections have been posed, we'll hear that testimony.  
13 Okay?

14 MR. NEWSOM: Your Honor, Dan Newsom, pro se  
15 creditor. If you want to hear objections (indiscernible)  
16 right now or are we doing that at a later time?

17 THE COURT: I'm sorry? Well, the objections --

18 MR. NEWSOM: Are you wanting to hear --

19 THE COURT: Objections have been filed. We're  
20 taking evidence now. Mr. Renzi is about to testify.

21 MR. NEWSOM: Okay.

22 THE COURT: Okay? Mr. Renzi, do you swear that  
23 the testimony you are about to give will be the truth, the  
24 whole truth, and nothing but the truth, so help you God?

25 THE WITNESS: Yes.

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1 THE COURT: No, there isn't. And most of the --  
2 most of these declarations were filed in response to the  
3 objections that were filed only a week before the hearing.

4 MR. HENDERSHOTT: Right, so there's no ability for  
5 us to be able to review them and digest them and, you know,  
6 be able to have a valid exchange of questions and answers  
7 during this hearing. Again, we do not have an army of  
8 professional lawyers to digest all these multiple  
9 submissions. It puts the credits at a disadvantage and I'm  
10 sure that's part of the strategy.

11 MR. NEWSOM: I agree. I'm in support of that  
12 objection.

13 THE COURT: Okay. True. Okay. Why don't you put  
14 Mr. Renzi on the stand, but you know, an awful lot of what's  
15 in his declaration is about compliance with various  
16 provisions of the Bankruptcy Code that is pretty obvious on  
17 its face and that hasn't been contested. Don't really think  
18 we need further evidence on that. So if there's points that  
19 you wish to argue with Mr. Renzi based on disputed issues,  
20 objected issues, let's offer that.

21 As to other points, to the extent that his  
22 declaration is just a kind of confirmation of compliance  
23 with provisions of the code that are not in dispute, I will  
24 admit it on those points. But to the extent that is  
25 anything in his declaration that deals with any of the

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1 THE COURT: All right. State your full name for  
2 the record.

3 THE WITNESS: Mark Anthony Renzi.

4 THE COURT: Thank you. You may sit.

5 MR. SLADE: Your Honor, may I approach the witness  
6 --

7 THE COURT: Yes. You don't need permission. You  
8 can go ahead.

9 DIRECT EXAMINATION OF MARK RENZI

10 BY MR. SLADE:

11 Q Good morning, Mr. Renzi.

12 A Good morning.

13 Q Can you tell the Court and the folks on the phone what  
14 you do and what your role is for the Debtors?

15 A So Mark Renzi. I'm a financial advisor to the Debtors.  
16 I lead our financial institutions group at BRG. I've been  
17 working with the company since the beginning of this  
18 bankruptcy process.

19 Q Okay. I want to try to hit the, what I understand to  
20 be contested issues as directed by the Court. The first one  
21 I want to talk about is feasibility. Okay? Can you just  
22 tell the Court what the plan does?

23 A Yep. The plan demonstrates that, number one, that we  
24 have gone out and solicited all of our customers to vote on  
25 the plan. It's -- demonstrates that it's in the best

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interests of creditors and it demonstrates that we have overwhelming support based on my understanding that was just admitted in terms of -- from Stretto.

Q Okay, can you just describe generally what are the transactions that are contemplated by the plan?

A The transaction contemplated by the plan is the sale of the assets to Binance.US and effectively doing that, you know, in short order by April. And that has been a maximizing value transaction that we've worked through with the company and the Unsecured Creditors Committee.

Q And if the transaction with Binance does not close, what happens under the plan?

A Under the plan, there's a provision for a toggle and that toggle into liquidation. And that has been heavily negotiated and it is a provision in case there are any contingencies. And most importantly, what I think the toggle does is it helps expedite any process to get cryptocurrency and assets back to customers.

Q Okay. So let's take each one of those in turn. I want to start with the Binance transaction. What role has your team played in diligencing the Binance transaction?

A You know, our team has worked alongside with the Debtors, our investment bank Moelis, and the company to make sure that we understand how the transaction works. We've worked specifically with Binance and their counsel to make

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THE COURT: Let me interrupt --

MR. SHEHADEH: -- third parties.

THE COURT: Let me interrupt you, please. Who is making the objection? Whenever you speak, you need to

identify yourselves or we won't have a record. Who is making the --MR. SHEHADEH: I'm sorry, Your Honor. Alah Shehadeh. Alah Shehadeh for the record, pro se creditor.

THE COURT: Just to be clear, when the witness is testifying, you can object on evidentiary grounds, right, if there's some reason under the rules of evidence why there's something wrong. But the fact that you disagree with what the witness says is not a ground for objection. That's a ground for argument at the end of the day. It's not a ground for objection to the witness's testimony. Okay?

MR. SHEHADEH: Well, I'm objecting, Your Honor, and there's facts behind my objection. It's not just my opinion.

THE COURT: But, okay, you'll have your chance to make your argument and if you have evidence you want to offer, to offer it. But to object to the witness' testimony is really something you can only do on evidentiary grounds. If the Debtor disagrees with you, they're entitled to put on their case and you can put your case on later, but it's not a ground to object to their evidence just that you disagree with it. Okay? Go ahead.

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sure that we had an opportunity to diligence how it would go, how it would work, and then we also solicited third-party information, made sure we had incredibly good detail about the markets in cryptocurrency to make sure that this transaction made sense.

Q Okay. And based on your review, do you believe the transaction with Binance makes sense?

A I do.

Q Sitting here, based on what you know today, do you have any reservations about the Binance transaction?

MR. SHEHADEH: Objection.

THE COURT: What is the objection?

MR. SHEHADEH: I object that the plan makes no sense, Your Honor. It's not a better plan. There was no toggle liquidation in the beginning when there was supposedly a bidding war.

THE COURT: Okay.

MR. SHEHADEH: -- between FTX and other companies.

THE COURT: All right, let me --

MR. SHEHADEH: If that -- if they want the best interest in the creditors, they should've just released our money when the FTX bid didn't go through. They would've saved millions and millions of dollars --

THE COURT: Let me --

MR. SHEHADEH: -- on counsel --

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MR. SLADE: Thank you, Your Honor.

THE COURT: The objection is overruled.

MR. SLADE: Thank you.

BY MR. SLADE:

Q Please describe for the Court why you're comfortable going forward with the Binance transaction based on what we know today?

A I'm comfortable with this transaction because number one, our team BRG has spent a significant amount of time diligencing this transaction. Number two, Moelis has got the same, they've diligenced this transaction extensively. Number three, the advisors Kirkland & Ellis has also diligenced a tremendous amount. Number four, FTI Consulting has also diligenced this transaction and then pressure tested this and they represent the Unsecured Creditor Committee and McDermott, Will and Emery has also done the same. So with the objectivity of counterparties that are protecting the customers and with the objectivity of independent parties that are representing the Debtors, I believe based on everything that I've seen that this is a fair plan and it's been well documented.

Q So you heard a couple of the regulators before you got on the stand testify about hypothetical potential regulatory options. Are you aware of those?

A I am. I've actually written about some of the

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1 regulations in cryptocurrency.

2 Q Okay. And in spite of those, do you still believe this

3 is in the best interests of the estate to go forward sitting

4 here today?

5 A Yes, I do.

6 Q Can you describe why?

7 A I think cryptocurrencies is an evolving asset class.

8 The regulatory overlay is still developing. I heard some of

9 the remarks that were made earlier in the Court here, but

10 there's nothing that I understand based on advice from and

11 counsel that precludes this transaction from going through.

12 Q Okay. Now I want to move to the toggle transaction.

13 Why is that part of the plan?

14 A I think the -- what we're trying to do, the Debtors,

15 the company, as well as its advisors, is to make sure that

16 to the extent that there's any reason that we're

17 uncomfortable with the transaction being consummated with

18 Binance.US, we have optionality to go convert it into a

19 toggle plan. And most importantly, it provides a path to

20 get crypto back to its customers as quickly as possible.

21 And we believe that that's very important.

22 Q Does the company currently have personnel on hand to do

23 the work needed for the toggle transaction if we decide to

24 toggle?

25 A Yes, it does.

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1 about?

2 THE COURT: Is the State of Texas still raising a

3 best interests issue or have they been satisfied on that

4 point? Is the -- are the state's attorneys on the phone?

5 Is anybody on the phone --

6 MS. RYAN: Your Honor?

7 THE COURT: Thank you.

8 MS. RYAN: Your Honor, I apologize. This is Mrs.

9 Ryan with the State of Texas. I was having problems getting

10 unmuted. Could you repeat your question, Your Honor?

11 THE COURT: The question was, does -- Texas had

12 raised an issue about whether under the disclosure

13 statement, liquidation was a better option than the plan,

14 which is essentially a question of best interests as we call

15 it under the Bankruptcy Code. I understand the Debtors'

16 response was that if the -- if an Alameda or other event

17 changes the plan recoveries, it would have the same

18 proportionate effect on Chapter 7 recoveries.

19 My question is, do you still have an objection on

20 that point? Do we need any evidence on it or have you been

21 satisfied?

22 MS. RYAN: Your Honor, I do still have some

23 questions on that point to get some clarification. And so

24 when the time is appropriate, I can ask those.

25 THE COURT: Okay, why don't you go ahead, put your

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1 Q Okay. And can you just describe for the Court what will

2 happen if we have to toggle to the toggle transaction?

3 A I mean, if we have to toggle from the Binance

4 transaction, the company is prepared and its personnel are

5 prepared to execute on the transaction to distribute

6 cryptocurrency to customers. It's important to do this. It

7 would be unfortunate because it would be a little less in

8 proceeds as I'm testifying here, but nonetheless, we have

9 the ability to do it and the personnel's ready to do it and

10 a plan to do it, if we had to.

11 Q Mr. Renzi, is the only reason to believe that if the

12 plan is confirmed, it's likely to be followed by further

13 liquidation or reorganization of the Debtors?

14 A Do you mind asking that question again?

15 Q Sure. Is there any reason to believe that if this plan

16 is confirmed there's going to be a likelihood of a need to

17 further reorganize or liquidate the Debtors --

18 A No.

19 Q -- in a way other than is described in the plan?

20 A No. I think the way it's described in the plan is

21 appropriate.

22 Q Thank you.

23 MR. SLADE: Your Honor, a clarification for you.

24 Do you view the liquidation analysis best interest test as a

25 matter that's in dispute and I need to inquire the witness

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1 best interests case on.

2 MR. SLADE: Sure, Your Honor.

3 BY MR. SLADE:

4 Q Mr. Renzi -- and I want to talk about the best interest

5 test and liquidation analysis that your team did, okay?

6 A Sure.

7 Q You just describe for the Court what you did to

8 evaluate the plan versus a hypothetical Chapter 7

9 liquidation?

10 A So number one, the declaration is quite extensive on

11 this, but I'll do the short version. Essentially, what we

12 did is evaluate all of the assets that we have, so the

13 coins, and make sure that we understood, you know, what kind

14 of proceeds we could get for rebalancing the portfolio. We

15 looked at that systematically. We looked at that with, you

16 know, being able to test and call market participants in the

17 market and understand how to monetize these assets to

18 rebalance, to make distributions in kind.

19 That is a complicated process based on the way the

20 markets work in cryptocurrency. And so, having the ability

21 to do that is very important in the plan for the Binance

22 plan. If we have to do it for the toggle, it would -- we

23 also considered that under the toggle and both of those are

24 key for the plan. And then we evaluated how those proceeds

25 will flow through the waterfall of creditors, you know,

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1 through the priority waterfall, and then down to account  
2 holders. And so -- and then we juxtaposed that analysis,  
3 that those two analyses against the liquidation. In a  
4 liquidation, we believe that the ability to monetize these  
5 assets is a little bit more problematic because these  
6 markets are particularly complicated.

7 There are unsupported coins and monetizing unsupported  
8 coins quickly is likely to have a very heavy discount. And  
9 because of those factors, we believe that the proceeds that  
10 we get under an immediate liquidation under a Chapter 7  
11 would yield lower recoveries for customers. So I think in  
12 general, to summarize at a high level that the plan has  
13 higher recoveries for all three entities, legal entities,  
14 versus a liquidation, a Chapter 7 liquidation, and that  
15 satisfies the best interests of creditors test.

16 Q Is that true for all creditors?

17 A Yes.

18 Q Does it doesn't matter whether or not FTX prevails in  
19 its litigation that it has initiated against the Debtors?  
20 Does that make a difference for purposes of liquidation  
21 analysis?

22 A No.

23 Q I want to turn now to the unsupported jurisdictions.  
24 What does the plan provide with respect to the 4 out of 50  
25 states that have not licensed Binance.US?

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1 entire platform over the Binance, so in order for Voyager to  
2 distribute to the three remaining states, they would have to  
3 do it manually. In my opinion, 120,000 customers with over,  
4 I believe, it's 106 coins, is incredibly problematic and  
5 fraught with -- to do it manually. So I would be very  
6 concerned if that was the path that we would have to take.

7 Q Can you just describe for the Court what some of the  
8 risks would be?

9 A The risks, I mean, when you have a very well-developed  
10 platform such as Binance.US, they have the ability to  
11 understand, you know, KYC and AML issues to make sure that  
12 there's a good record keeping. That platform can be -- you  
13 know, track all of that very well. I think a manual process  
14 is very labor intensive. I don't think it's easy to check,  
15 KYC and AML issues for making distributions. Those are some  
16 of the issues that I would have if it had to be done  
17 manually.

18 MR. SHEHADEH: Your Honor, I'd like to object to  
19 that because if you look at Binance's asset shuffling, it's  
20 very similar to FTX and this is by (indiscernible), Your  
21 Honor. Summarizing Binance's, ongoing lies and deception  
22 with the (indiscernible) financial transparency, comingling  
23 customers' funds, (indiscernible) assets. So you wanted to  
24 (indiscernible), then they have liquidity issues and then  
25 they file for bankruptcy. Then what happens next? Is that

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1 A I was under the impression now it's three, but wanted  
2 to confirm that, Your Honor.

3 Q So what does the plan provide for those customers?

4 A So the plan provides for a period of time for the three  
5 states that remain to be able to have distributions in kind  
6 for customers. I think effectively all customers are  
7 treated on a pari passu basis with equal footing and they  
8 will all get the same amount of recovery based on their  
9 class. So that's the most important thing. And regardless  
10 of state. However, there are some technicalities within the  
11 states, three states that I'm aware of, that I don't really  
12 fully understand the technicalities within those states, but  
13 I understand that there's some problems for distribution.  
14 However, there's a six-month hold period, you know, to  
15 address that, to provide enough time for the states to get  
16 comfortable with distributions to customers.

17 Q Just so we're clear, do the customers in the  
18 unsupported jurisdictions get the same recovery as the  
19 customers in the supported jurisdictions?

20 A Yes, they do.

21 Q Okay. Can you describe for the Court, whether it's  
22 possible for Voyager to facilitate distributions in kind to  
23 creditors in the unsupported jurisdictions and do the  
24 Binance transaction at the same time?

25 A I mean, the Binance transaction effectively sells the

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1 the best interest in the creditors?

2 THE COURT: I --

3 MR. SHEHADEH: I feel like if (indiscernible)  
4 really have the best interest in the creditors, the moment --  
5 -- first of all, they wouldn't even have filed Chapter 11 --

6 THE COURT: Mr. Shehadeh --

7 MR. SHEHADEH: -- because they want --

8 THE COURT: Mr. Shehadeh --

9 MR. SHEHADEH: -- organization plan --

10 THE COURT: Stop, please.

11 MR. SHEHADEH: -- had no plan to reorganize the to  
12 reorganize the company. They want to sell it.

13 THE COURT: Please. Please stop.

14 MR. SHEHADEH: They want to liquidate it and milk  
15 as much money --

16 THE COURT: Please stop for a moment. Stop for a  
17 moment, please. You need to understand, disagreeing with  
18 the witness' conclusion is not a ground to interrupt the  
19 witness' testimony. You have your own arguments, you may  
20 have your own evidence, but that's not a basis on which to  
21 interrupt the witness' testimony. It is not a proper  
22 objection to what the witness has said. If you have  
23 questions of the witness, then you can ask them when the  
24 direct examination is finished. If you have evidence, you  
25 will have a chance to offer it after the Debtors have

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1 finished their case, but I know you're not a lawyer, but  
 2 please listen to me. You cannot interrupt a witness'  
 3 testimony or object to it on the ground that you disagree  
 4 with it. That is not a proper objection. Okay? It is only  
 5 a proper objection if there's something wrong under the  
 6 rules of evidence with what is being offered. And if you  
 7 disagree, that's a point either for argument or for cross  
 8 examination or for the presentation of your own evidence.  
 9 Okay?

10 MR. SHEHADEH: Yes, Your Honor, I understand that  
 11 but I'm not arguing on it. I'm just stating the facts. I  
 12 objected to the fact that the witness is saying that that is  
 13 the best --

14 THE COURT: That is arguing.

15 MR. SHEHADEH: -- thing for the creditors --

16 THE COURT: Stating what you believe are contrary  
 17 facts is argument. So you have to wait. Okay? That's not  
 18 a basis to interrupt --

19 MR. SHEHADEH: It's not what I believe --

20 THE COURT: -- this witness' testimony.

21 MR. SHEHADEH: -- are facts, what I understand.

22 THE COURT: Okay. Please don't interrupt the  
 23 witness' testimony and -- with that kind of issue again,  
 24 okay? All right. Had you finished your prior answer?

25 THE WITNESS: Yes, Your Honor. Thank you.

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1 risks involved in these transactions from a security  
 2 perspective for the customers?

3 A Well, rebalancing is very -- is complicated. So making  
 4 sure you have the right counterparties, making sure that  
 5 they can transfer money in and out within accounts in an  
 6 appropriate fashion is imperative. I believe that those are  
 7 among the things that they're doing to address risks.

8 Q And how about the actual transaction where we're  
 9 transferring the money either to Binance in the Binance deal  
 10 or directly to customers in the toggle?

11 A Absolutely. The transaction and distribution of funds  
 12 or coins in kind is incredibly important to get done. I  
 13 think you can't reverse a wire in crypto. It's what you  
 14 distribute to a wallet. It's permanent, and undoing that  
 15 is, to the best of my knowledge, I don't think you can undo  
 16 a mistake. And in a bank context, you can reverse a wire,  
 17 as -- by way of example.

18 Q And can you describe for the Court whether the risks  
 19 are higher or lower of those transactions, if the employees  
 20 that are still at the company leave?

21 A My opinion is it's much higher if the employees at the  
 22 company leave. They're experts in the space. I believe  
 23 that it's hard to find people like them. I think if it was  
 24 to be someone independent, by way of a Chapter 7 Trustee, I  
 25 think it would be much more complicated and obviously, in my

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1 THE COURT: Okay.

2 BY MR. SLADE:

3 Q Just a few more questions, Mr. Renzi. I want to talk  
 4 about the remaining personnel at the company. Okay? Can  
 5 you describe the role of the remaining personnel at Voyager  
 6 in executing on either the sale to Binance or the toggle  
 7 transaction?

8 A The remaining personnel have, you know, in-depth  
 9 knowledge of cryptocurrency markets, how the operations  
 10 work, how to do things, you know, within the constructs of  
 11 legal entities that they have, and they're experts within  
 12 Voyager. So they'll help facilitate rebalancing, which is a  
 13 major transaction to get done and it is very, very  
 14 complicated. They'll also help with, you know, making sure  
 15 the records are maintained properly and any other things  
 16 that are required by the trust.

17 Q What would be the impact on for -- just as an example,  
 18 the security risks to these transactions if the employees  
 19 were to leave?

20 A I would be very concerned if the employees had to  
 21 leave. They were -- have been protecting these assets  
 22 during the bankruptcy case. They understand how to address  
 23 security issues and they have intimate knowledge of how to  
 24 transact within the cryptocurrency marketplace.

25 Q So can you just describe for the Court like some of the

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1 expert opinion, I believe it would cost -- it would be not  
 2 value maximizing under those scenarios.

3 Q Okay. That's actually the last topic I wanted to  
 4 cover, which is the possibility of the appointment of a  
 5 Trustee. Do you believe an appointment of a Trustee would  
 6 be good or bad for creditors?

7 A It would be bad.

8 Q Can you describe why?

9 A I think the most important thing we've heard from some  
 10 of the customers on the phone is to get their cryptocurrency  
 11 back. So timing is very important. We believe that if  
 12 there was a Trustee, it would extend the timeline for  
 13 customers to get their cryptocurrency back.

14 We also believe that there's a higher probability of a  
 15 conversion to a seven, and right now, we already have 97  
 16 percent of customers voting in favor of this plan. And then  
 17 lastly, we've been doing this in a transparent and  
 18 collaborative way with the Unsecured Creditors Committee and  
 19 advisors. So I'm not -- really don't understand, other than  
 20 the downside of appointing a Trustee.

21 MR. SLADE: Thank you, Your Honor. Pass the  
 22 witness.

23 THE COURT: All right. Is there anybody in the  
 24 room -- start with the people who are present in the room --  
 25 who wishes to cross examine Mr. Renzi?

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CROSS EXAMINATION OF MARK RENZI

BY MS. SCHEUER:

Q Good morning, Mr. Renzi. For the record, Therese Scheuer for the Securities and Exchange Commission.

A Morning.

Q Mr. Renzi, what are market constraints?

A I think simply put, and I know this is a newer asset class, but simply put, market constraints really mean by way of example, Bitcoin and ETH have a very deep market trading volume. And there are others that have, you know, a large market cap. But there are a number of less common, more obscure coins that don't have as much of market depth.

And so as I in my decoration, I used to be -- I used to be a trader a long, long time ago and understand markets very well. And if you are selling coins that don't have a lot of market depth, there's a tremendous amount of concern that it will move in the market. I think Bitcoin and ETH have a much larger market, so by way of example, it's harder to move that market unless there's very large blocks, but that's the general concept of -- that you were asking about.

Q Thank you. And I'm going to paraphrase, but I think Paragraph 76 of your declaration provides that a mass sale of coins in illiquid markets is expected to move the market significantly. Do you agree with that?

A Yes, I agree with that.

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issue is that there are unsupported coins. Unsupported coins are much easier to address if you're distributing them in kind versus trying to liquidate those coins. We went to market makers to understand what that would look like if we had to transact quickly and were given rates of decrease, you know, in the market. And then then lastly, I'll say my expert opinion from having to trade derivatives, if you try to move trading derivatives quickly, people will generally try to take advantage of that and then it will be a much worse outcome.

Q Okay. Are you familiar with the stipulation that Voyager recently filed with the FTX debtors?

A I'm familiar, but I would like a refresher if somebody has a copy of that for me.

Q This stipulation regarding FTX's preference actions. Does that refresh your recollection at all that Ms. Okike mentioned at the beginning of the hearing?

A Yes.

Q Broad brush, what is your understanding of what settlement provides?

MR. SLADE: I'll object to the relevance of this question.

THE COURT: Well, I don't know if it's relevant or not. It seems to be not what this witness is testifying about. Is there a different witness that you plan to offer

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Q Okay. And in a Chapter 7 case, you assume that a Chapter 7 Trustee would liquidate coins immediately, which would move the market lower and your declaration provides it would reduce distributions by 20 to 26 percent; is that correct?

A Yes. That's correct.

Q But the market depth constraints were not as significant for a sale or toggle plan, correct?

A That's correct.

Q And why was that?

A Well, under -- number one, you know, having the ability to rebalance with time, you know, maximizes value and that's important. I think to the -- and we also have verified that if we had to do this quickly, there'll be tremendous pressure on the market. So I think if you're going into a liquidation, straight liquidation, without a prescribed plan, so a Chapter 7 liquidation, there'd be a tremendous amount of pressure on the market, and that's also validated by market makers in the industry, Moelis, BRG, and also in consultation with the UCC advisors.

Q And are those -- are the market constraints what accounts for the difference in recoveries and the different scenarios, the sale toggle, the liquidation? Is that the primary difference?

A That is a primary difference. I mean, I think the

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on the -- as to the FTX stipulation?

MR. SLADE: That's not up for today, so no.

MS. SCHEUER: Your Honor, I don't plan to question in depth regarding that stipulation. It just goes to the effect that might have on distributions.

THE COURT: The stipulation or the underlying claim.

MS. SCHEUER: The stipulation.

THE COURT: You can answer to the extent you know.

BY MS. SCHEUER:

A I think that I'd like to look at the continent before I answer you in depth, but in general, I understand that if we have to reserve more funds for FTX Alameda, that it would apply across all scenarios equally, so it would reduce recoveries equally in general. But that's --

Q Is your understanding that four -- over \$400 million would be set aside in connection with those preference actions? Is that --

A Under a hypothetical scenario, yes. It would have to be set aside, but I don't -- I can't opine as to how, why. And I just understand the math.

Q Is that your understanding of what the general settlement currently provides? That --

A I understand --

Q -- \$400 million would be set aside.

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1 A -- 400-plus million. Yes. Sorry. Sorry to interrupt  
 2 you.

3 Q That's quite all right. I'm sorry if I was talking  
 4 over you. But that 400 million, 445 million, would that be  
 5 set aside in coins or is it being set aside in cash?

6 A Your Honor, I'm not sure I know the answer to that.

7 Q If it had, if \$445 million worth of coins had to be  
 8 liquidated now and set aside in cash, would there be market  
 9 depth constraints in liquidating those coins?

10 A I mean, I think the same issue applies. If you -- to  
 11 the extent that you had to set aside funds, we would work  
 12 with the Unsecured Creditors Committee and also the company  
 13 and our advisors to find out what's the optimal way to set  
 14 aside funds so that we don't have the market constraint  
 15 issues that I described earlier. But we had to set aside  
 16 them, it would certainly be a significant amount of money.  
 17 And if we have to liquidate coins, it's subject to all of  
 18 the issues that I just formerly testified to.

19 Q And the 445 million is almost half of the coins on the  
 20 value of the coins on the Debtors' platform? Is that right?

21 A The value has gone up, so it's a little less than half  
 22 now.

23 Q Okay. And what steps would you take to mitigate  
 24 against those market depth constraints?

25 MR. SLADE: Your Honor, I would object. I'm just

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1 MS. OKIKE: Yes.

2 THE COURT: Okay.

3 BY MS. SCHEUER:

4 Q Mr. Renzi, was part of your assumption that 450 million  
 5 would be converted into cash immediately or --

6 A I --

7 Q Your assumptions in the sale toggle or liquidation  
 8 analyses, did you assume that 455 million would be converted  
 9 into cash immediately?

10 A I don't think my declaration addresses the 455 -- 445  
 11 million.

12 Q But your declaration does provide that if you had to  
 13 liquidate those coins immediately it would be a significant  
 14 depreciation in a Chapter 7 case between 20 to 26 percent  
 15 for liquidating all of the coins; is that correct?

16 A Your Honor, I don't follow the -- I don't understand  
 17 the question.

18 THE COURT: Explain --

19 MR. SHEHADEH: I don't think (indiscernible)  
 20 question was clear.

21 THE COURT: How -- explain how the value of the  
 22 coins is being determined under the Binance deal.

23 THE WITNESS: Well, the issue that we're getting  
 24 at is a math issue. So if we have to do it under any  
 25 circumstance, it's going to affect them all equally. So to

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1 having a hard time connecting any of these questions to the  
 2 SEC's objection.

3 MS. SCHEUER: Our Paragraph 7 of the SEC's  
 4 objections noted that creditors and stakeholders are  
 5 entitled to know what the sale transaction provides.  
 6 They're entitled to know the benefit of the sale transaction  
 7 versus the toggle or a liquidation. I'm paraphrasing.

8 THE COURT: This isn't really a feature of the  
 9 sale transaction. The -- you know, the Bankruptcy Code says  
 10 that administrative claims have to be paid in full. The FTX  
 11 preference, Alameda preference claim is asserted as an  
 12 administrative claim. The only way you can comply with the  
 13 Bankruptcy Code requirement is to reserve the amount that's  
 14 in dispute until such time as the claim is resolved. I  
 15 think, no matter what, that the Debtors are selling coins to  
 16 Binance and holding cash -- but you can correct me if I'm  
 17 wrong -- but that Binance will be, whether it's -- whether  
 18 Binance -- anything that Binance will not be distributing  
 19 directly to customers as their original distributions is my  
 20 understanding, is being converted to cash; is that right?

21 I'll ask the Debtors.

22 MS. OKIKE: That's correct, Your Honor.

23 THE COURT: Okay. I think that's been stated in  
 24 the plan. So what's been held in reserve, am I right, is  
 25 just cash?

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1 the extent that you have to do it under a Binance plan or a  
 2 toggle plan or even a liquidation plan, it still  
 3 demonstrates that the plan, under a Binance plan or a toggle  
 4 plan, is still better than a Chapter 7. So to the extent  
 5 that it's just simple math, to the extent that you have to  
 6 liquidate a portion, into cash immediately, it's going to  
 7 affect all plans relatively equally in terms of the math.  
 8 It's -- it'll be -- it'll decrease the recoveries overall.

9 THE COURT: Ms. Okike, under the Binance deal, is  
 10 there a particular date as of which the values of the coins  
 11 will be measured?

12 MS. OKIKE: The value of the coins?

13 THE COURT: Yes.

14 MS. OKIKE: Yes, Your Honor.

15 THE COURT: And what is that date?

16 We're going to take a ten-minute break while you  
 17 figure that out. I thought I remembered that under the  
 18 Binance deal, the value of the coins would be determined as  
 19 of market prices on a particular date. In other words, they  
 20 wouldn't just be whatever they happen to be actually sold at  
 21 when the transfers happened.

22 MS. OKIKE: Yes, Your Honor.

23 THE COURT: It would be fixed based on other  
 24 market terms.

25 MS. OKIKE: So it's no later than the date that is

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one business day prior to the closing.

THE COURT: Okay. All right.

MS. OKIKE: It's a moving target.

THE COURT: So in other words, they'll be based on a market that will be -- that won't be affected by these particular coin transfers.

MS. OKIKE: Correct.

THE COURT: It'll be fixed at that market price.

MS. OKIKE: Correct.

THE COURT: All rights. Let's just take ten minutes, okay? We are in recess for ten minutes.

(Recess)

THE COURT: Please be seated. By the way, I'm not sure that the disclosure statement is officially in evidence. I think it ought to be.

MR. SLADE: Yes. Your Honor, we move to -- we offer Exhibit 12 and 13 off of our exhibit list, which are the order scheduling the hearing with the disclosure statement and the actual disclosure statement. Those are at Dockets No. 861 and 863.

THE COURT: I'll admit those into evidence. So they need to be in evidence, because that's what some of the objections are addressed. Please proceed.

(Exhibits 12 and 13 entered into evidence)

MS. SCHEUER: Thank you, Your Honor. For the

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Are you asking him if they will be liquidated before the closing or are you asking him, would it have such an effect?

MS. SCHEUER: Would it have such an effect.

THE COURT: If it happened.

BY MS. SCHEUER:

A I think the goal is to do as much rebalancing as possible, you know, before closing. So to the extent that that's done, it -- the answer is, it depends. I mean, if you're not able to do a sufficient amount of rebalancing between now and then and then you have to do immediately, then it's certainly very problematic but right now, we're trying to avoid having that problem.

Q So is liquidating \$445 million worth of coin, that would be -- that's part of your rebalancing transaction?

A I believe it is part. It's part of it. We're trying to rebalance. We're rebalancing every day, throughout the day, right now.

Q And so you're trying to balance as much as you can prior to closing; is that correct?

A We're trying to rebalance as much as we can prior to closing.

Q I think your --

A And hopefully, we'll be -- we'll meet that goal.

Q I think your prior testimony was that the major delta between the sale transaction and a Chapter 7 liquidation or

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record, Therese Scheuer for the Securities and Exchange Commission.

BY MS. SCHEUER:

Q Hello again, Mr. Renzi. Mr. Renzi, just before the break, I think we heard that the value of coins would be fixed two days prior to the closing of that, correct?

A I believe so, yes.

Q And when will closing occur?

A I think that it's -- I understand it's a moving, a little bit of a moving target, but sometime in April hopefully.

Q So could the -- could liquidating \$445 million worth of coins affect the value of coins when they're fixed at that date?

MR. SLADE: Your Honor, I would object to relevance, and it's also outside the scope.

THE COURT: You can answer. I'll overrule the objection. You can answer.

BY MS. SCHEUER:

A You mind asking again? Thank you.

Q Sure. So could liquidating the \$445 million worth of coins in connection with the FTX settlement, could liquidating that amount of coins affect the value of the coins when they're fixed two days prior to closing?

THE COURT: Can I just make sure I understand?

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the toggle transaction but primarily the Chapter 7

liquidation was having to sell all of those coins by April 18th; is that correct?

A Well, the issue is, and I think I spell it out in my declaration, is if we have to convert, there's a period of time that you have to convert and it will take more time to address any issues that the Chapter 7 Trustee would have and monetize into cash to the extent that we have it. And then furthermore, there are unsupported coins that aren't going to be able to be addressed easily in a Chapter 7.

Q But your prior testimony was that the market depth constraints were the -- I think the significant reason for the difference between the sale transaction and the Chapter 7 transaction because in Chapter 7, you assumed the Trustee would liquidate the coins immediately by April 18th.

A To the extent that, I mean, if any of the rebalancing hasn't been done or we have to monetize any other coins and convert it into cash, there is going to be a significant amount of issues in terms of market constraints and it will lower recovery.

Q Do you -- is it your view that liquidating \$445 million worth of coins now would it impact the liquidation analysis that we've set forth?

A If you have to liquidate coins immediately, right now, it will decrease the amount of recoveries across all

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scenarios.

Q But in the sale transaction, your assumption was that they would all be liquidated immediately. So isn't the impact really on the sale transaction or the toggle in decreasing the recovery so that the delta between the sale and Chapter 7 is much smaller than is in your liquidation analysis?

A I don't think you stated my testimony correctly.

Q How so?

A You just said, I think what -- number one, I think you had made a statement. I'm not sure I follow all of your statement, but I think the issue is that, you know, under a transaction, a sale, you're maximizing value. You are rebalancing these coins. You are getting proceeds from the Binance transaction and there's less of a market discount because you're doing it in an orderly fashion.

To the extent that you don't do it in an orderly fashion and it has to convert, it's left to people that are less familiar with cryptocurrencies. There's going to be a diminution in value.

Q Okay. All right, I think we can move on. Thank you. Mr. Renzi, how do you assess the impact of pending regulatory actions and investigations? Did you assess what that impact would be on investor recovery or could be on investor recovery? Was that included in your analysis?

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A I think -- are you asking -- I don't understand the question. Are you asking if CFIUS prevents the transaction?

Q Mm hmm.

A Yes, there -- we would have to go into a toggle plan.

Q And what happens if CFIUS decided to deny approval after the sale had closed? What would happen to investors?

A I would defer to counsel.

Q But that wasn't included in your numbers, your estimates?

A If we need to toggle, we have the provision to toggle into a toggle liquidation plan.

Q But if CFIUS denies approval after closing, the toggle plan is no longer possible. That wasn't included in your numbers; is that correct?

A I don't think there's any numerical quantification of --

Q Okay.

A -- CFIUS.

Q Okay. Why do you think this is a good deal for investors?

A This deal is -- satisfies the best interest test. It's approved by 97 percent of our customers. It is maximizing value, as proven by the analysis that's provided in my declaration. Those are among the most -- the reasons.

Q It is approved by 97 percent of your customers --

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A I discussed any regulatory issues with counsel, make sure that I understood them.

Q Was that modeled in your analysis, included in your numbers?

A It is included.

Q How so?

A There -- to my understanding and actually in the discussion earlier today in Court, there are issues that are still unresolved by regulators. And so as far as I know, everything that we're doing in terms of rebalancing has been improved -- approved by the Court to do so. And we're following the Court rules and what's been approved to do by the Court.

And we've done that in a transparent fashion with the approval of the UCC and their advisors and I don't think that that speaks to your question in terms of how that is addressed from a regulatory environment that's evolving and we're trying to comply with whatever -- all the rules that we -- have been set out for us by this Court.

Q But there was no kind of risk or a some kind of percentage in your numbers that could -- that kind of covers regulatory risks?

A No.

Q Whether CFIUS approves the transaction impacts whether stakeholders get paid; is that right?

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MR. SHEHADEH: I'm going to object to that, please. It's approved 97 percent of the customers at a certain level. (indiscernible) based on how much money each creditor has, so that's 97 percent of maybe like the top five creditors (indiscernible) on the plan.

THE COURT: Okay, who is speaking right now?

MR. SHEHADEH: Alah Shehadeh, Your Honor, for the record.

THE COURT: Mr. Shehadeh, you cannot interrupt questions and answers to argue over the answer. Okay? You can only speak when it is your turn to question a witness or when it is your turn to offer evidence or if you have an objection that is based on a rule of evidence as to the form of a question. I've said this now, I think, three times. You cannot interrupt just to disagree with the witness. It is not appropriate and you have to stop doing it, okay?

Please proceed, counsel.

THE WITNESS: Your Honor, I'm happy to rephrase my statement.

BY MS. SCHEUER:

A So of the people voting, 97 have voted in favor.

Q Thank you. So of the 6 percent voting, 97 percent of those 6 percent. Is that --

A I just want to say, of -- I think my testimony stands on its face.

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1 Q Thank you, Mr. Renzi. Wouldn't account holders be just  
2 as well off if they could get their -- if they could get  
3 coins back into their own wallets without this uncertainty?  
4 A I'm sorry, can you repeat the question, please?  
5 Q Wouldn't account holders be just as well off if they  
6 could get coins back into their own wallets without this  
7 uncertainty?  
8 A I believe that this transaction provides incremental  
9 value for customers and is overwhelmingly voted in favor and  
10 the customers that are voting believe this, too. So I  
11 believe that what we're doing is value maximizing.  
12 Q And that incremental value is that the 20 million  
13 that's being paid by Binance?  
14 A It's at least 20 million, for sure, but also we believe  
15 that the amount of recoveries is going to be higher based on  
16 the construct of the Binance plan.  
17 Q Mr. Renzi, I just have a couple of questions left.  
18 What is the Debtors' current cash position?  
19 A Your Honor, can I ask one of my associates the current  
20 cash position?  
21 THE COURT: Do you know what it is?  
22 THE WITNESS: I don't have it in front of me.  
23 THE COURT: Do you have a range, rough approximation?  
24 MR. SLADE: I apologize. I didn't hear the question.  
25 THE COURT: What is the Debtors' current cash position?

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1 A I think I answered the question. It's fungible --  
2 Q Okay.  
3 A -- for the estate.  
4 Q Okay. All right. Thank you, Mr. Renzi. I have no  
5 more questions.  
6 THE COURT: All right, is there anybody else in  
7 the courtroom who has questions for Mr. Renzi?  
8 MR. SHEHADEH: Your Honor -- yes, I have  
9 questions, Your Honor.  
10 THE COURT: No, you -- let me deal with the people  
11 who are present in the courtroom first, okay? Counsel, who  
12 -- you are?  
13 MR. ST. JOHN: Yes, Your Honor. For the record,  
14 Jason St. John on behalf of the New York State Department of  
15 Financial Services.  
16 THE COURT: Okay.  
17 CROSS EXAMINATION OF MARK RENZI  
18 BY MR. ST. JOHN:  
19 Q Morning, Mr. Renzi. Just a few questions.  
20 A Good morning. Afternoon.  
21 Q You're correct. Good afternoon. If I understood your  
22 direct testimony correctly, Voyager currently has the  
23 personnel to toggle to the liquidation plan under the plan,  
24 correct?  
25 A Do you mind bringing the microphone up?

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1 BY MS. SCHEUER:  
2 Q Do you have a ball park, Mr. Renzi, more or less than  
3 10 million?  
4 A It's more than 10 million.  
5 Q More than 10 million. More than 20 million?  
6 A It -- they have more than \$20 million of cash.  
7 Q More than 40 million?  
8 A Yes, they have more than \$40 million of cash.  
9 Q And what will that cash be used for under the plan?  
10 A It's spelled out in the plan in terms of, to the extent  
11 that administrative costs need to be paid and priority costs  
12 need to be paid, the cash will be used to be paying  
13 administrative and priority claims.  
14 Q What is the amount of professional fees that remain  
15 outstanding?  
16 A I don't have that in front of me.  
17 Q Will the money that Binance is providing as part of the  
18 transaction, will that 20 million go to professional fees?  
19 A The 20 million will -- is fungible and goes into the  
20 entire estate so --  
21 Q So it could go to professional fees?  
22 A I view the cash as fungible for the estate.  
23 Q Okay. Would it -- is there any provisions that it  
24 would, the \$20 million that's being paid would go to account  
25 holders?

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1 Q I apologize.  
2 A Yeah, thank you.  
3 Q If I understood your direct testimony correctly,  
4 Voyager has the personnel and ability to toggle to  
5 liquidation under the plan, correct?  
6 A They have the ability to execute under a Binance plan  
7 and a toggle plan.  
8 Q Okay. And under a toggle plan, cryptocurrency will be  
9 returned to account holders, correct?  
10 A Yes.  
11 Q Okay. Should the sale transaction go forward,  
12 customers in supported jurisdictions have the option to  
13 become customers of Binance.US; is that correct?  
14 A Yes.  
15 Q Okay. And if a person in a supported jurisdiction  
16 chooses not to become a customer of Binance.US, their claims  
17 will be liquidated and paid out in cash three months after  
18 closing; is that correct?  
19 A Believe so.  
20 Q Okay. And if an account holder in an unsupported  
21 jurisdiction -- let me rephrase. An account holder in  
22 unsupported jurisdiction in the circumstances Binance.US  
23 does not attain licensure, has to wait for six months after  
24 closing for their claims to be liquidated, correct?  
25 A Yes. To the extent that there are unsupported states

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1 and that it does not -- and then Binance is not able to get  
2 the supported states to work with customers, it'll take  
3 another six months.

4 Q Okay. And that additional time is so that Binance.US  
5 has the opportunity to become licensed in unsupported  
6 jurisdictions?

7 A Yes. I think they do have the opportunity to become  
8 licensed in unsupported jurisdictions.

9 MR. ST. JOHN: That's all. Thank you, Your Honor.

10 MR. BRUH: Your Honor, Mark Bruh for the United  
11 States Trustee. While we didn't formally object to a  
12 liquidation, I would like to ask the witness a few questions  
13 if the Court would allow.

14 THE COURT: Go ahead.

15 MR. BRUH: Thank you.

16 CROSS EXAMINATION OF MARK RENZI

17 BY MR. BRUH:

18 Q Mr. Renzi, my name is Mark Bruh. I'm an attorney for  
19 the United States Trustee and I just have a few questions  
20 regarding liquidation, specifically Chapter 7 analysis from  
21 your affidavit and declaration that's admitted into  
22 evidence. But before I start that, I just wanted to ask a  
23 background question, kind of pivot -- I guess piggybacking  
24 on the question from Ms. Scheuer and the SEC. You said the  
25 cash position of the Debtors is in excess of \$40 million; is

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1 A The issue, Your Honor, is that we're rebalancing coins  
2 every day. And so to the extent that those have been  
3 rebalanced, I don't have those numbers in front of me.

4 Q Okay.

5 A But it's happening --

6 Q The -- my questions were going to the FTX settlement  
7 because it's my understanding under the proposed settlement  
8 which hasn't been approved by the Court yet that \$445  
9 million worth of crypto would be converted to fiat currency.  
10 And do you know which crypto will be converted?

11 MR. SLADE: Your Honor, I object again. This is  
12 not in front of the Court. I don't see how this is  
13 relevant.

14 THE COURT: Can I -- there's an awful lot of  
15 confusion reflected in the questions here. Let me just --  
16 let me just ask something. As I understand the Binance  
17 deal, all of the Debtors' cryptocurrency will be transferred  
18 to Binance. It will be designated -- or there will be  
19 designations as to what will be distributed to customers.  
20 But other than what is distributed to customers, it'll just  
21 be bought by Binance; is that correct?

22 MS. OKIKE: Your Honor, the plan is actually set  
23 up that crypto will only move to Binance as customers sign  
24 up for --

25 THE COURT: As and when they need it. Okay.

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1 that right?

2 A I did.

3 Q Okay. Do you know how the crypto holdings are broken  
4 down by the Debtor as of today?

5 A In terms of the coin balances?

6 Q Or for example, when the plan was submitted, there was  
7 -- it said there was about \$1.1 billion of assets, not  
8 including the infusion from Binance, and today we heard that  
9 it's about 1.34 billion, so there's been an increase because  
10 there's cryptocurrency and it's gone up in value.

11 A Yes.

12 Q Do you know how much stable coin the Debtors hold today  
13 that's pegged one to one with the U.S. dollar?

14 A I have supporting schedule, not in front of me, but I  
15 would have to refer to that schedule.

16 Q Can you refer to it? Was it attached to your  
17 declaration?

18 A I don't believe it was attached to my declaration.

19 Q Do you know how much Bitcoin the Debtors are holding  
20 today?

21 A I believe it's over 8,000 Bitcoin, but --

22 Q Eight thousand. Okay. And do you know how much  
23 Ethereum they're holding today?

24 A I don't have that in front of me.

25 Q Okay. And then the rest --

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1 MS. OKIKE: So it will transfer on a weekly basis  
2 for the customers that have signed up during, you know, the  
3 prior week.

4 THE COURT: And what crypto that the Debtors hold  
5 that is not necessary or not part of those initial  
6 distributions to customers?

7 MS. OKIKE: The Debtors will continue to hold that  
8 cryptocurrency as customers sign up and it'll be transferred  
9 on a weekly basis.

10 THE COURT: But I thought I understood that, you  
11 know, the Debtors will make initial distributions. There  
12 are all kinds of reserves that need to be established, so  
13 people will get their initial distributions. I thought  
14 otherwise, the Debtors were liquidating their cryptocurrency  
15 holdings; is that right?

16 MS. OKIKE: Your Honor, we will be liquidating,  
17 but we have the opportunity for customers in supported  
18 jurisdictions, they have three months post closure to sign  
19 up. If they don't want to sign up for the Binance platform  
20 at that time, their distributions are liquidated into cash.  
21 They'll be sent back to the company and the company will  
22 make those distributions. Same for customers in unsupported  
23 jurisdictions. We're hopeful, again, that approvals are  
24 reached, you know, five or six months, but if they're not,  
25 that cash will be liquidated either by --

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1 THE COURT: So whatever cash you need to set up  
2 this reserve for FTX Alameda will be obtained by market  
3 liquidations or by sale to Binance?

4 MS. OKIKE: Market liquidations, Your Honor, and  
5 Binance may be a counterparty to that.

6 THE COURT: Okay.

7 MS. OKIKE: But over time. We've already  
8 obviously begun the rebalancing exercise and we are doing it  
9 with the understanding that we are going to likely have to  
10 hold back 445 million, given the asserted administrative  
11 priority claim.

12 THE COURT: But when you say that the Debtor has  
13 1.3 billion of cryptocurrencies and that the Binance deal is  
14 therefore 1.32, from what you're telling me now, Binance  
15 isn't buying all of that.

16 MS. OKIKE: They're not purchasing crypto, yes,  
17 Your Honor. The crypto -- they're really serving as a  
18 distribution agent for customers under the plan. They are  
19 providing incremental value both in terms of the up-front  
20 cash consideration as well as the expense reimbursement and  
21 the transaction structure really provides over 100 million  
22 of incremental value than the toggle transaction because of  
23 the feasibility of --

24 THE COURT: Yeah, I understand the arguments about  
25 why it results in more, but it's just -- so in other words,

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1 those transaction fees de minimis?

2 A They are. That's on average, 2 percent.

3 Q But so --

4 A They -- sorry. It's on average 2 percent from my  
5 testimony, but you're right, for stable coin, it is less.

6 Q So that's what I was getting at was trying to figure  
7 out, because I haven't really seen the coin report as to how  
8 much the Debtors' holding is in USDS as opposed to Bitcoin,  
9 which I understand has a higher transaction cost, or  
10 Ethereum and piggybacking on that, the liquidation under the  
11 FTX deal or the transaction, we don't know what coins are  
12 going to be sold to convert the crypto to fiat currency; is  
13 that right?

14 A I mean, it depends on what scenario we're under, but I  
15 think one thing to just clean up is that there is the 2  
16 percent friction cost, but then there's a market depth  
17 issue, so --

18 Q Right.

19 A The market depth issue and speed also matter. So to  
20 the extent that you have to move and liquidate, you know,  
21 crypto quickly, you're going to have issues in terms of the  
22 market depth, even in Bitcoin and Ethereum.

23 Q And is that the 20 percent number that you had in  
24 Paragraph 88 of your declaration?

25 A I can't speak to exact paragraph because it's not in

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1 Binance is not buying all of your crypto. Some of it will  
2 be liquidated in the market.

3 MS. OKIKE: Correct. We actually don't view them  
4 as buying the crypto. We view them as a distribution agent  
5 who's facilitating distribution under the plan through their  
6 platform.

7 THE COURT: So the only thing they will take  
8 custody of is what they distribute to people who become  
9 customers --

10 MS. OKIKE: Correct.

11 THE COURT: -- or if in the market you sell them  
12 something?

13 MS. OKIKE: Correct.

14 THE COURT: Okay.

15 BY MR. BRUH:

16 Q My concern with the -- talking about FTX was that the  
17 conversion to fiat currency, if that's going to happen  
18 sooner than later, the settlement is approved, would then  
19 your 2 percent projection of transaction fees under a -- for  
20 the sale of cryptocurrency, would that be affected by that  
21 transaction?

22 A I don't think the 2 percent would be affected, no. I  
23 think it's just the estimate for the friction cost to  
24 transact in cryptocurrency.

25 Q Now, isn't it -- doesn't transactions of USDC, aren't

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1 front of me --

2 Q Right.

3 A -- if I had that, but I -- yes, there are discounts, I  
4 because of those issues in terms of market depth. So I'm  
5 sure you're referencing the right paragraphs.

6 Q I mean, I don't have it in front me, but --

7 A But nonetheless, around --

8 Q But it's the 20 percent number.

9 A There's a 20 percent and then a 26 percent.

10 Q Right. And does that take into account, because on  
11 September 2nd of 2022, Bitcoin was trading at about, just  
12 under 20,000 and today it's trading in excess of 23,000. So  
13 is that 20 percent number still accurate?

14 A It is and more importantly is that it wasn't just done  
15 by -- it wasn't done in aggregate. It was done by coin and  
16 then it was done with market makers and Moelis and the UCC  
17 advisors to make sure that we had the appropriate  
18 comprehensive set of information to make sure that we  
19 understood what would happen relative to market depth and  
20 moving coin quickly or slowly in a rebalancing transaction.  
21 So it was very well informed, well analyzed, you know, not  
22 only with the advisors here but also with market  
23 participants that are market makers.

24 Q What is your basis that a Chapter 7 Trustee cannot make  
25 in-kind distributions to creditors if the case is converted?

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1 A Basis is based on discussions with counsel and that the  
 2 understanding is that in my assumptions that would need to  
 3 be done quicker and that in-kind distributions would be  
 4 quite challenging. You know, if a U.S. Trustee -- excuse  
 5 me, if a Chapter 7 Trustee was to do that.  
 6 Q So for Chapter 11, if -- strike that. If the Debtor  
 7 toggles to a liquidation, the Binance deal doesn't go  
 8 through and the Debtor has to make distributions to its  
 9 customer base, can Voyager do that or will it have to go out  
 10 to a third party platform to make those distributions?  
 11 A Under what scenario? I'm sorry.  
 12 Q Under liquidation, if the Binance deal doesn't go  
 13 through.  
 14 A So under a toggle plan --  
 15 Q Right.  
 16 A -- you can use the Voyager platform to make  
 17 distributions.  
 18 Q So Voyager would have to be restarted and then it would  
 19 start making distributions to its customer base; is that  
 20 right?  
 21 A Yes. It would -- they would make distributions.  
 22 Q And it's your opinion that under a conversion to  
 23 Chapter 7, a Chapter 7 Trustee doesn't have a platform to  
 24 make these distributions, so there would be some sort of  
 25 costs associated with it; is that right?

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1 MR. SHEHADEH: (indiscernible).  
 2 THE COURT: Don't speak over the witness. Don't  
 3 interrupt just because you disagree. I'm tired of giving  
 4 you the same warning. Go ahead, Mr. Bruh.  
 5 MR. BRUH: Thank you, Your Honor.  
 6 BY MR. BRUH:  
 7 Q And I understand that, because the crypto today is not  
 8 being held in a bank account; isn't that right?  
 9 THE COURT: Mr. Bruh, Section 704(a) of the  
 10 Bankruptcy Code says "the Trustee shall collect and reduce  
 11 to money, property of the estate." Are you saying that's  
 12 not what the Trustee has to do in the Chapter 7 case?  
 13 MR. BRUH: No, Your Honor.  
 14 THE COURT: Then what's the point of these  
 15 questions?  
 16 MR. BRUH: Okay, I'll move on, Your Honor.  
 17 THE COURT: Go ahead.  
 18 BY MR. BRUH:  
 19 Q I guess my last question to you is what's your  
 20 experience in Chapter 7 bankruptcies?  
 21 A Limited.  
 22 Q Okay.  
 23 MR. BRUH: I have no further questions, Your  
 24 Honor.  
 25 THE COURT: Okay. Anybody else in the courtroom

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1 A There is a cost associated with it. There -- we  
 2 believe that also it's a timing issue, too.  
 3 Q Can you explain the timing issue to me a little more,  
 4 elaborate on that?  
 5 A My understanding is you have to set a new bar date.  
 6 You have to restart part of the process. It would take  
 7 quite a bit of time to effectively get cryptocurrency to  
 8 clients. And then, furthermore, I would be very concerned  
 9 about the employees under a Chapter 7 plan if they would be  
 10 participants in a Chapter 7 plan.  
 11 Q Yeah. Okay. There's -- but a Chapter 7 Trustee can  
 12 make interim distributions to creditors, right?  
 13 A Yes. I believe so. But they would -- if we had to  
 14 make distributions it would be in cash, is my understanding.  
 15 Q But there's no -- what is your -- what is that based on  
 16 that it has to be in cash? Why can't a Chapter 7 Trustee  
 17 make in-kind distributions on an interim basis to the  
 18 customers?  
 19 A You can't deposit cryptocurrency into a bank account.  
 20 Q Correct.  
 21 A That's why.  
 22 Q But it's being held --  
 23 MR. SHEHADEH: (indiscernible).  
 24 THE COURT: Don't interrupt. I'm tired of telling  
 25 you. Do not interrupt. All right?

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1 who wishes to cross examine the witness? Okay. Is there  
 2 anybody on the line who wishes to cross examine the witness?  
 3 MS. RYAN: Good afternoon, Your Honor. This is  
 4 Abigail Ryan with the State of Texas and I have some  
 5 questions for the witness.  
 6 THE COURT: Okay, Ms. Ryan, please proceed.  
 7 MS. RYAN: Thank you, Your Honor.  
 8 CROSS EXAMINATION OF MARK RENZI  
 9 BY MS. RYAN:  
 10 Q Good afternoon, Mr. Renzi. I'm going to kind of shift  
 11 to a more basic question for you. You're aware that Alameda  
 12 has a loan facility claim for \$75 million, right?  
 13 A I am.  
 14 Q And is it the Debtors' plan to subordinate that claim?  
 15 A Yes.  
 16 Q And do you have an estimated likelihood of success that  
 17 it will be subordinated?  
 18 MR. SLADE: Your Honor, I object. That's not  
 19 relevant. It's also outside the scope of this witness'  
 20 testimony.  
 21 THE COURT: I'm not sure how this ties into your  
 22 objection or as to the issues, Ms. Ryan. Could you explain  
 23 to me where you're going with this?  
 24 MS. RYAN: Absolutely, Your Honor. My objection  
 25 is that the account holders weren't given enough disclosures

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as to the percentage that their recovery could drop down to in different situations. Mr. Renzi in his affidavit testified that his numbers are based upon the Debtors getting the \$75 million at Alameda loan facility subordinated, but there's no mention in his declaration what the numbers would be under the Biance plan or toggle plan -

THE COURT: Okay.

MS. RYAN: -- if they weren't successful in subordinating.

THE COURT: Do you know the answer, Mr. Renzi?

THE WITNESS: It would be the amount of recovery on the \$75 million, the percentage recovery there, and then it would dilute the rest of the claims pool. I'd have to spend a little bit of time running that number.

THE COURT: Ms. Ryan, are you asking the witness what would happen if the loan was not subordinated at the holding company and TopCo level or are you asking him what would happen if the operating company were found to be liable on the loan?

MS. RYAN: Well, they'll be -- I have two questions, Your Honor. One is, as to the --

THE COURT: You do understand --

MS. RYAN: -- subordination of the loan facility

THE COURT: You do understand, don't you, that

two, this \$445 million preference claim, Alameda wins on.

THE COURT: But you just told me that creditors were entitled to know it, but didn't you just read the answer from the disclosure statement?

MS. RYAN: So one would think that would be the answer, Your Honor; however, the disclosure statement and the affidavit submitted by Mr. Renzi, they kind of conflict in this regard. Under a Chapter 7 in the disclosure statement, the creditors would actually do better than the toggle plan and that's not discussed in Mr. Renzi's affidavit that under the toggle plan if the two Alameda issues were successful in Alameda's favor, toggle plan, sale plan both, it's going to drop to 24 to 26 percent, depending on which paragraph you read in the disclosure statement.

THE COURT: Aren't you assuming that the Alameda issues only affect recoveries under the Chapter 11 plan and would not also affect recoveries under a Chapter 7 liquidation?

MS. RYAN: No, Your Honor. I think it would affect recoveries under a Chapter 7 liquidation, too. And so what I would like Mr. Renzi to explain to me is if Alameda is successful on both of those counts as they set out in the disclosure statement, what percentage of recovery or range -- because I know we have moving parts here -- would account holders receive under the Biance plan, under

under the terms of the loan documents, the named borrower is not the operating company where the customers are. Alameda has asserted that the named company, that the operating company should be liable. So are you asking what would happen if the operating company were found liable on that loan or are you asking about what would happen at the parent company levels, because subordination at the parent company levels really doesn't mean anything for the recoveries of the customers.

MS. RYAN: So I'll explain this in a different way and maybe you'll see where I'm going, Your Honor.

THE COURT: Okay.

MS. RYAN: In the disclosure statement on Page 55, it states that recovery for both account holders' claims and OpCo General Unsecured Claims would be reduced to approximately 24 percent from 51 percent under the sale transaction if the Alameda loan facility claim is not subordinated and Alameda prevails in its alleged preference claim.

And so they're asserting in the disclosure statement that both would have an effect on distribution. And so what I'm wondering is, that was not mentioned in Mr. Renzi's declaration, but it is something that creditors have the right to know. What would happen to the recovery if one, as they say, the subordination isn't successful; and

the toggle plan, and under a plan of liquidation, because it's not clear from the disclosure statement or Mr. Renzi's affidavit.

THE COURT: Do you know the answer, Mr. Renzi?

THE WITNESS: Your Honor, it would take some time to do that, but it would decrease the recovery across all scenarios but still under the plan and under the toggle plan, it would still be greater than under a liquidation scenario.

BY MS. RYAN:

Q Mr. Renzi, in the disclosure statement itself, it specifically says on Page 55 under Item B, the Alameda loan, that underneath the toggle transaction and in the Chapter 11 cases, the recoveries would be reduced to approximately 24 percent. And likewise, in the disclosure statement, it says that under Chapter 7, the possible return would be a 35 to 39 percent. So doesn't that show that a Chapter 7 would actually be more beneficial than the toggle plan for the sale?

THE COURT: You can answer the question. Go ahead.

BY MS. RYAN:

A Yeah. So number on, I don't follow your math. It's just -- it's very simple. You can't just pick and choose whether or not -- it only works whether or not the 75

1 million is subordinated only in the liquid -- under the  
 2 Binance plan and then not in the liquidation. I mean, I  
 3 think you have to use it uniformly, in my expert opinion,  
 4 across all plans.  
 5 Q I agree with you.  
 6 A So the issue --  
 7 Q I completely agree with you.  
 8 THE COURT: Does the 39 --  
 9 BY MS. RYAN:  
 10 Q But in the disclosure statement --  
 11 THE COURT: Does the 39 percent number that was  
 12 quoted by counsel assume that there is no Alameda claim in a  
 13 Chapter 7 liquidation?  
 14 THE WITNESS: In my declaration, it highlights and  
 15 if I could have my declaration, that'd be great so I can  
 16 answer you directly, Your Honor. It highlights the  
 17 recoveries you have under a subordination of the \$75 million  
 18 claim.  
 19 THE COURT: Okay.  
 20 THE WITNESS: Under all four --  
 21 BY MS. RYAN:  
 22 Q And does your affidavit include a scenario if Alameda's  
 23 \$445 million preference claim is successful?  
 24 A It would further -- it would be a further reduction,  
 25 yes, under all four scenarios.

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1 it makes it look like the toggle plan would be worse than  
 2 the Chapter 7 and I don't believe there was adequate  
 3 information in Mr. Renzi's affidavit to show, okay, let's do  
 4 the math. If Alameda's successful, how much do they all  
 5 decrease by? And I think that that should have been  
 6 disclosed and it's not.  
 7 THE COURT: Are you saying that you think  
 8 customers were misled into thinking that the Chapter 11 plan  
 9 was a bad deal? I mean, 97 percent of them voted in favor  
 10 of it.  
 11 MS. RYAN: I'm saying --  
 12 MR. SHEHADEH: Yes.  
 13 MS. RYAN: Your Honor, I'm saying that I don't  
 14 believe they were given adequate information as to what  
 15 would happen if this Alameda \$75 million loan facility claim  
 16 and the preference claim of \$445 million was successful in  
 17 Alameda's favor and what that would look like for them.  
 18 I believe that regardless of whether it's  
 19 stretched out across Binance plan, toggle plan, liquidation  
 20 plan is that we all decrease by that amount, meaning the  
 21 Binance plan would still be higher under simple math; they  
 22 still should have been given those numbers because, yes, the  
 23 disclosure statement is a bit misleading when you read a  
 24 portion of it and it says under the Chapter 7 scenarios,  
 25 you'll get 34 to 39 percent back, but if Alameda is

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1 Q But is that in your affidavit? Did you discuss the  
 2 \$445 million preference claim?  
 3 A I'm testifying to that now.  
 4 Q Okay, so it wasn't in your affidavit, right?  
 5 THE COURT: Ms. Ryan -- Ms. Ryan, just, I'm  
 6 confused by all this because isn't this basic mathematics  
 7 that if you calculate percentage recoveries in three  
 8 scenarios and you conclude certain amounts and then you  
 9 calculate what the percentages would be if you add  
 10 additional unsecured claim amounts in each of the same three  
 11 scenarios, as long as you're doing apples to apples  
 12 comparison, you still find out that the -- if under the  
 13 original calculation, the Binance came out highest, it still  
 14 would. If the toggle came in second, it still would. And  
 15 if the Chapter 7 calculation came in third, it still would.  
 16 That's just indisputable.  
 17 MS. RYAN: Your Honor, I agree.  
 18 THE COURT: It's indisputable mathematics.  
 19 MS. RYAN: It is simple. It's very simple  
 20 mathematics. However, this information wasn't presented to  
 21 any of the creditors in the disclosure statement and this is  
 22 something that I believe should have been disclosed so that  
 23 they can have a fair reading of these percentages and what  
 24 could possibly happen. When reading the disclosure  
 25 statement, you know, and specifically in the Paragraph 55,

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1 successful under the plan and under the toggle, you're only  
 2 going to get 24 percent back. And in another section, it  
 3 says 26 percent back. I don't think that our accountholders  
 4 have actual numbers that they can hang their hat on.  
 5 THE COURT: Okay. So do we need more evidence on  
 6 this point or is the rest of that for argument as to whether  
 7 the disclosure was sufficient?  
 8 MS. RYAN: Your Honor, I would appreciate, if  
 9 there is more evidence, I think the percentages would be  
 10 very helpful in that regard. The witness doesn't -- witness  
 11 said he'd have to sit down and try to figure them all out.  
 12 So it's not something that he actually has right now. So it  
 13 wasn't in the disclosure statement. It's not something we  
 14 have available at the moment.  
 15 So I'm not sure what other evidence -- we can save  
 16 it (indiscernible) Your Honor.  
 17 THE COURT: I'm sorry --  
 18 MS. RYAN: We can save it for argument, Your  
 19 Honor, and I'll change my subject of questioning.  
 20 THE COURT: Okay.  
 21 MS. RYAN: Thank you.  
 22 BY MS. RYAN:  
 23 Q So when you were determining if the Binance deal, Mr.  
 24 Renzi, was in the best interests of the creditors, did you  
 25 read the Binance terms of use?

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1 A Members of my team did.

2 Q And were you made aware, since it's your team, of the

3 possibility that the accountholder's information can be

4 stored anywhere in the world that Binance.US sees fit?

5 MR. SLADE: Your Honor, I object. That assumes

6 facts not in evidence.

7 THE COURT: All right. I guess that's right,

8 technically. I don't have the Binance terms of use on file.

9 Is there a dispute as to what they say?

10 MR. SLADE: Actually --

11 MS. RYAN: I can re-ask --

12 MR. SLADE: -- a problem.

13 MS. RYAN: I can re-ask that question, Your Honor.

14 BY MS. RYAN:

15 Q So under -- the terms of use were ready by people on

16 your team, correct?

17 A Yes, I believe so.

18 Q And did they bring any concerns to your attention

19 regarding those terms of use?

20 A They're not lawyers. I think they just brought up the

21 fact that to the extent that the Binance plan does not work,

22 we have a toggle plan, and if the terms of use become so

23 problematic as you're highlighting, we do have an option to

24 go to the toggle plan.

25 Q And are you an expert in regulatory issues?

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1 in a six-month period?

2 MR. SLADE: Your Honor, I object. That assumes

3 facts not in evidence.

4 THE COURT: Well, the question was, do you know

5 that to be a fact. Do you? Do you have any idea?

6 THE WITNESS: No.

7 THE COURT: Okay.

8 MS. RYAN: Okay, Your Honor, I will pass the

9 witness. Thank you very much.

10 THE COURT: Okay. There anybody else on the line

11 who wishes to cross examine the witness?

12 MR. SHEHADEH: I'd like to cross examine, Your

13 Honor.

14 THE COURT: Okay. Is that Mr. Shehadeh?

15 MR. SHEHADEH: Yes, Your Honor.

16 THE COURT: Okay, go ahead.

17 MR. SHEHADEH: Your Honor, I'd just like to ask

18 him about the plan.

19 CROSS EXAMINATION OF MARK RENZI

20 BY MR. SHEHADEH:

21 Q When they made that deal with FTX, like (indiscernible)

22 go through or why wasn't there a toggle done then? There

23 would've been more return for the creditors. And I see that

24 both sides have disclosed critical information

25 (indiscernible) the voting and they said in an email that

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1 A No. I'm not.

2 Q Did you have anyone on your team who was reviewing the

3 terms of use that was an expert in regulatory issues?

4 A No.

5 Q Do you know under the Binance plan, is it possible for

6 Binance to make a one-time distribution to creditors?

7 A I understand that the Binance plan that those weekly

8 distributions to -- through the Binance platform and to the

9 extent that someone elects to have an account with them and

10 they would like to take the crypto off of the exchange, that

11 would be the methodology for -- to do that.

12 Q Okay. And so it's my understanding the six-month

13 waiting period for the nonconsenting jurisdictions is to

14 give Binance the ability to get licensed in those

15 jurisdictions; is that right?

16 A Yes, that's my understanding.

17 Q And do you know or do you have knowledge that Binance

18 has yet to file a request for licensure with the Texas State

19 Securities Board or the Department of Banking?

20 A My understanding is they're working with your

21 jurisdiction. I don't know the extent, where that lies

22 right now.

23 Q And are you aware that it is virtually impossible for a

24 license to be approved, whether it be for Binance or anyone

25 else with the Securities Board or the Department of Banking

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1 was sent out to customers, they said that if we agree with

2 the deal, we would get a higher return than we would if we

3 did the toggle down effect, which was defective. Don't you

4 agree? Because (indiscernible) not true.

5 MR. SLADE: Your Honor, it's a compound question -

6 -

7 MR. SHEHADEH: And what is --

8 THE COURT: Let's break your question down. Let's

9 break your question down. I think you asked, why was there

10 no toggle at the time of the FTX deal?

11 MR. SHEHADEH: Yes.

12 MR. SLADE: Your Honor, I would object to

13 relevance.

14 THE COURT: Well, go -- let's go ahead.

15 THE WITNESS: Happy to answer, Your Honor.

16 BY MR. SHEHADEH:

17 A So number one, we -- when we were initially, you know,

18 the initial --

19 Q When you say we, who are you referring to?

20 THE COURT: Don't interrupt, please. Let the

21 witness talk. Go ahead.

22 THE COURT: Thank you.

23 BY MR. SHEHADEH:

24 A When we initially were analyzing the transaction with

25 FPs, we worked in consultation with a number of people

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including the Unsecured Creditors Committee advisors, the company, the Moelis and the rest of the advisors and we all agreed as well as did many of the states and other -- in congress believed that FTX was a viable entity. Unfortunately, what's been proven to all of us on the Wall Street Journal every day is that it was a fraud.

So our belief at the time, based on the information that we had that FTX was a viable transaction, it was vetted by multiple parties, both the Unsecured Creditors Committee advisors and the company advisors, in terms of the transaction and the toggle plan was not needed.

However, based on the facts that we saw unfold over the past few months, we believe that we don't want to see another issue where to the extent that we are uncomfortable with the transaction with Binance for whatever reason, that our main objective was to get crypto back to our customers as quickly as possible, and thus a toggle plan was warranted to make sure that we could do that.

Q So to get the crypto back to customers as fast as possible, wouldn't it have just made more sense to just open up the exchange and allow customers to (indiscernible) their crypto off the platform? Isn't that the whole reason behind the Chapter 11 organization? You guys, (indiscernible) the company so you guys would've filed Chapter 7, then Chapter 11. And the money that you guys (indiscernible) to Coinbase

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comply with the laws of this country. So I'm trying to do that.

Q Object. There's no relevance. We're talking Bankruptcy Court. We're not talking about laws of this country. If you want to talk about laws of this country then everybody in Voyager would be charged with criminal charges right now. So let's not really get into that right there. Anyway, back to my point.

Like I said, you guys made a public statement stating that assets were fine, the company was fine, and they are still operable. Five days later, the company filed for bankruptcy. (indiscernible). So instead, you guys (indiscernible) find somebody to buy the company, which is not reorganization, but so when the FTX deal didn't go through, there was a bidding war and I quote -- and this is on Forbes and you can look it up, on Wall Street, there was a bidding war for Voyager and there was a good faith deposit from each one of these companies that wanted to buy Voyager. Where is the good faith deposit and why wasn't it sold to second-highest bidder?

And if that didn't work out, why wasn't there a winddown or whatever you guys call it done then? Why was it more months of delegation, litigation, and moving (indiscernible) going to pay Moelis and Kirkland exorbitant fees, that I might add, because they didn't charge Celsius

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every day, what is going on with that money? What is that money used for?

THE COURT: Okay, you have to ask one question at a time, Mr. Shehadeh.

BY MR. SHEHADEH:

A Mr. Shehadeh, I think there are a number of assumptions that you would have to make that -- where you would be correct. So the assumption would be, is that there was no bankruptcy laws, and that we could just take assets and move them as quickly as possible. The issue with that assumption is number one, you have to make sure that you're doing things in a fair, transparent way and that is well documented.

There is a process of checks and balances in our Court system, in the Bankruptcy Court system. That's imperative and that is to make sure that the company is working through to maximize value in consultation with the Unsecured Creditors Committee and that all customers have the ability to vote for this. And unfortunately --

Q (indiscernible).

THE COURT: Don't interrupt the answer, please. Go ahead.

BY MR. SHEHADEH:

A Unfortunately, the construct that you have provided does not provide the provision for voting, nor does it

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the same fees that they were charging us. Well, we're not going to get into that. It's a whole other subject. But I just want to know, toggle down now with the Binance deal.

MR. SLADE: Your Honor --

BY MR. SHEHADEH:

Q And the SEC objected to. Go ahead.

MR. SLADE: Your Honor, I object. To the extent what was a question, he already answered.

THE COURT: I think he --

MR. SHEHADEH: That was a completely different question. He can answer it.

THE COURT: I think the only question I heard there was why was there not a toggle deal, but also why was there not a backup bidder at the time of FTX. I don't think he asked about the backup bidder at the time of FTX before, so you can answer that question.

BY MR. SHEHADEH:

A We tried to have a backup bidder during the transaction and we were not successful in having one that we could turn to right away.

Q So the whole bidding war, that was just all media propaganda? That was a lie?

A Your Honor, I don't know how to answer that question. It's talking about --

MR. SLADE: It's talking about -- it assumes facts

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not in evidence again.

THE COURT: So you --

MR. SHEHADEH: You don't know how to answer a lot of questions.

THE COURT: The question is, is the reason why you didn't have a backup bidder, that there wasn't anybody else interested and that the statements that there were other people who were bidding was a lie.

THE WITNESS: The statements that I understand are not a lie, Your Honor.

THE COURT: Okay.

BY MR. SHEHADEH:

Q (indiscernible) when FTX bided for Voyager, only FTX submitted a bid for Voyager?

A No, I'm not saying that.

Q Okay, then. So there obviously was other bidders. Do you have the name of those other companies

A Your Honor, is that a question for me, Your Honor?

THE COURT: Mr. Shehadeh, he said there were other bidders. He said they didn't have one who was willing to be --

MR. SHEHADEH: Right, which just proves that he just lied and contradicted himself.

BY MR. SHEHADEH:

Q But anyway, can you name me the other bidders, sir,

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here, we're dealing with crypto. You know, it's a different situation than giving regular money.

THE COURT: You have to ask --

MR. SHEHADEH: (indiscernible).

THE COURT: You -- let me finish. You have to ask questions on matters that relate to what's actually in front of me today. It's not an open mic. It's not a town hall. It's not a gripe session. It's not a radio call in-show for sports news or crypto news. It's not a forum for everybody to air every complaint they have --

MR. SHEHADEH: Yes, I understand that, Your Honor.

THE COURT: -- about everything that's happened in the past.

MR. SHEHADEH: It's not a podcast, it's not (indiscernible). I understand that.

THE COURT: Okay, so we have --

MR. SHEHADEH: I'm asking a question, Your Honor, I just want an answer to.

THE COURT: We have issues in front of us today that don't include why things weren't -- you know, things that weren't done at the time of FTX. Those -- I don't see how that's at all relevant to any of the issues.

MR. SHEHADEH: Well, the relevance today, Your Honor, which I'm saying is because had they just did that before, there would've been more money for the creditors.

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please? Do you know?

A Binance was one of the other bidders.

Q So Binance was another bidder. Let's include all the other companies. Binance was -- when we seen that FTX, they (indiscernible) with you guys, was wasn't the deal sent to Binance? And on top of that, why was Binance's deal and incentive lower than what it what it would have been to Celsius? Because Binance (indiscernible) Celsius' people a \$50 incentive. We didn't get nothing like that.

A Your Honor --

Q So if FTX fell through, why would (indiscernible).

THE COURT: I don't understand where --

MR. SHEHADEH: That's my question.

THE COURT: I don't understand. You know, you've got to stop making speeches and just ask questions, Mr. Shehadeh. We're trying to give you an awful lot of leeway because I know you're not an attorney, but there are rules to how this proceeding goes. It is not time for you to just make argument or complaints, particularly about things in the past that aren't really in front of us today.

MR. SHEHADEH: I understand that, Your Honor, and I apologize. You're right. I'm not attorney, Your Honor, but what I'm stating is simple fact and creditors deserve answer so. My money is not a toy to be played with. And this is different situation. We're not dealing with fiat

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We would've never had that clawback and I don't even see how there is a clawback when we give Alameda \$650 million loan. Isn't that the whole reason why we went into bankruptcy, because they defaulted on that loan? So how do we owe them \$455 million? That's my question.

THE COURT: We are where we are. So how does any of that have anything, any bearing on what we ought to do today?

MR. SHEHADEH: I'm sorry, can you repeat that, please?

THE COURT: I said, we are where we are. We can't undo the past, so how do your questions on those points other than you're being angry about them, how do they have any bearing on what we ought to do?

MR. SHEHADEH: Yes, Your Honor. I'm very angry because I have had over \$100,000 in Voyager and they want to give me back 12,000, 13,000 (indiscernible). And my portfolio balance, let's say 18, 19, 25 (indiscernible). So what happened to that extra money? Does that make any sense? I give -- Your Honor, I give you -- you want to buy a hot dog and I give you a hamburger.

THE COURT: You have to ask questions.

MR. SHEHADEH: (indiscernible).

THE COURT: You have to ask questions that are focused on the transactions and proposals that are in front

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1 of us today. Okay? I know you're angry about these things,  
2 but I don't know how many times I can explain to you that  
3 you have to calm down about them and focus on --

4 MR. SHEHADEH: I understand that, Your Honor.

5 THE COURT: -- what we're trying --

6 MR. SHEHADEH: I understand --

7 THE COURT: You also have to -- you also have to  
8 not interrupt me when I'm speaking to you. Okay? That's a  
9 cardinal rule.

10 MR. SHEHADEH: Your Honor, last time --

11 THE COURT: Stop.

12 MR. SHEHADEH: -- allow me to speak and you cut me  
13 off the courtroom --

14 THE COURT: Stop it, stop it, stop it, until I am  
15 finished. All right? My patience is wearing thin with you,  
16 Mr. Shehadeh. You are not listening to me. You want to  
17 conduct the hearing in the manner that you want to conduct  
18 it. You have to listen to me. There are issues in front of  
19 us today that I am trying to give you the chance to address  
20 and I am bending over backwards to tolerate multiple  
21 interruptions and refusals to abide by my instructions.

22 But you have to listen to my instructions. You  
23 have to abide by them. It's a Court proceeding. I cannot  
24 let you hijack it to deal with other gripes that you have  
25 about the past. You must understand that and you must

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1 question for the witness about what we're dealing with  
2 today, please ask it.

3 BY MR. SHEHADEH:

4 Q Okay. Back to with the FTX and (indiscernible). Why  
5 wasn't Binance considered a valid backup bidder when FTX  
6 deal didn't go through and when that didn't go through, why  
7 was there not a winddown then? (indiscernible) that answer.

8 THE COURT: Go ahead.

9 BY MR. SHEHADEH:

10 A They didn't agree to be a backup bidder.

11 Q I'm sorry?

12 A Binance did not agree to be a backup bidder.

13 MR. SHEHADEH: Your Honor, did you hear what he  
14 just said?

15 THE COURT: Yes. He said back in the time of the  
16 FTX deal, Binance did not agree to be a backup bidder.

17 BY MR. SHEHADEH:

18 Q So if I'm dealing on something and I was bidder one and  
19 then he decided not to, wouldn't I be the next step in mind  
20 to be a bidder? So if they didn't want to be a backup  
21 bidder, that does not make any sense.

22 A I don't understand the rationale for -- Binance is an  
23 organization that's well advised. They can make their own  
24 decisions. The process for auctioning the assets was well  
25 documented and marketed by Moelis. There are multiple

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1 accept it and you must calm down and listen to my  
2 instructions. And if you have questions, please ask  
3 questions about the merits of what we are trying to do today  
4 and whether it makes sense to do this today. But all your  
5 complaints about other things that happened in the past, I  
6 can't change those things. They don't affect what we're  
7 doing today. You have to focus on what we're doing today.  
8 And if you have objections to what we're doing today, you  
9 have to ask to the extent you want evidence and then you  
10 have to make objections and arguments based on what we're  
11 doing today. But there's an order in which these things  
12 have to be done. I can't let you continue to just interrupt  
13 the proceedings with gripes about the past. That's not what  
14 we're here to do today. It's not what the business of the  
15 Court is today. All right? Do you understand that?

16 MR. SHEHADEH: I understand that, Your Honor.

17 THE COURT: Can you follow --

18 MR. SHEHADEH: So can you explain to me --

19 THE COURT: Can you follow those --

20 MR. SHEHADEH: -- what the business of the Court  
21 is?

22 THE COURT: Will you -- can you follow those  
23 instructions? Are you capable of following them?

24 MR. SHEHADEH: Yes. Yes, I am, Your Honor.

25 THE COURT: All right. Then if you have a

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1 participants and it was done in a fair and transparent way,  
2 and when you're trying to sell the business to, at that  
3 point in time, FTX was the highest bidder, it was done with  
4 a number of representatives from the Unsecured Creditors  
5 Committee, their advisors, as well as the company and the  
6 company's advisors. So it was done completely transparent  
7 in my opinion.

8 Q Again, like Judge Wiles said, we're not here about  
9 opinions. We're here about facts. So what facts do you  
10 have on that?

11 A I believe what I said is a fact.

12 Q In your opinion. We're not here for your belief, sir,  
13 we're here for facts. You have any documentation that shows  
14 that?

15 A Your Honor, I --

16 Q (indiscernible).

17 A Your Honor, I participated directly in the auction. I  
18 can state for a fact that what I said is true.

19 Q Is there any type of information stating about the  
20 purchase agreement and what terms it was?

21 MR. SLADE: Your Honor, I object. He answered  
22 this question.

23 THE COURT: Sustained. Sustained. We've spent  
24 enough time on the -- on last fall. We're here to talk  
25 about the deal that's in front of us today. So the

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objection is sustained. MR. SHEHADEH: Which is what, Your Honor? Can you explain?

THE COURT: The objection is that questions about what happened at the time of the FTX deal had nothing to do with what we're doing here today and so they are irrelevant to our proceedings.

MR. SHEHADEH: I understand.

THE COURT: So I have sustained the objection to your question.

MR. SHEHADEH: Okay. So what are we talking about today, this hearing? What does this hearing pertaining to?

THE COURT: The hearing today is whether we confirm the plan that is currently proposed, which is to sell to Binance and in the event that transaction doesn't go through, to toggle to the toggle plan under which Voyager will to the extent it can distribute assets. Although the testimony so far is that it -- there are certain kinds of coins that I guess could be distributed through Binance that Voyager would not be able to transfer.

The question is whether we are going to confirm that plan. That's the issue we have today.

MR. SHEHADEH: Okay, I understand that, Your Honor.

MR. SHEHADEH: Binance has liquidity some and they become (indiscernible) Your Honor.

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THE COURT: The question is, what evidence do we have on any of these points? The proposal --

MR. SHEHADEH: I mean --

THE COURT: It's not up to me.

MR. SHEHADEH: -- there's plenty of evidence, Your Honor.

THE COURT: It's not up to me to formulate a plan. I have a proposed plan in front of me that proposes the sale to Binance and most of the people who will be affected by that have voted in favor of it. So you don't like it, but the question is, is there evidence --

MR. SHEHADEH: (indiscernible) Your Honor, you know what I mean?

THE COURT: What's that?

MR. SHEHADEH: Robbed of their hard earned money.

THE COURT: Okay, do you have questions about -- for this witness on these subjects?

MR. SHEHADEH: I'll pass the witness, Your Honor.

THE COURT: Okay.

MR. SHEHADEH: There's other people (indiscernible).

THE COURT: Thank you. Is there anybody else on the phone who wishes to cross examine the witness?

MS. DIRESTA: Hi, Your Honor, I would. Can you hear me?

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THE COURT: I'm sorry, I couldn't understand you.

MR. SHEHADEH: In case that Binance does become -- has liquidity issues and then goes bankrupt or files for Chapter 11 or whatever, and then what happens?

THE COURT: Then you'd be -- then if you elect to become a Binance customer and Binance goes into bankruptcy, then you would be in another bankruptcy proceeding. But --

MR. SHEHADEH: So is that in the best interest of the creditors, you think, Your Honor?

THE COURT: Well, I'm not -- you know, I'm not the one to answer your questions. I'm the one to hear argument and to make a decision, but so far, most of the people who have actually taken the time to vote, have voted in favor of this. I understand, you know --

MR. SHEHADEH: Yes, but --

THE COURT: I understand your questions but, you know, I don't know if Binance is in -- you and a few other people and to some extent the regulators have sort of said, well, gosh, we have questions. But I'm looking for some evidence. I don't want to do anything that's going to hurt customers. I want to do what's best for customers. I think if the Debtors had reason to believe Binance was going to go into bankruptcy, they wouldn't want to do business with Binance. Nobody wants to do that.

MR. SHEHADEH: (indiscernible) FTX.

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THE COURT: Who is it?

MS. DIRESTA: My name is Gina DiResta. Can you hear me?

THE COURT: I can, but who do you represent?

MS. DIRESTA: I am a pro se creditor. I represent myself.

THE COURT: Okay.

MS. DIRESTA: So, before I ask the witness the question, just so you know because I do a good amount of the creditors that's on this call, I received some text messages saying that we can't really hear you well. So if you maybe -- I don't know whether the mic is positioned, so we do have a hard time hearing you, just so you know.

THE COURT: Okay.

MS. DIRESTA: And then as for my question for the witness.

CROSS EXAMINATION OF MARK RENZI

BY MS. DIRESTA:

Q For the people -- for the creditors who do not want to move over to Binance in order to get their assets and they would rather just wait out their three months and get liquidated, would those creditors' KYC information still be transferred over to Binance?

A I don't know the answer to that specific question for KYC information. I believe that if you're going to open an

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1 account at Binance, then they will make sure that you comply  
2 with KYC as AML.

3 Q Yes, but my question isn't if I'm going to open an  
4 account with Binance because that makes sense. You would  
5 need the KYC information. My question was, if I do not want  
6 to open an account with Binance and I want to wait the  
7 three-month period and get cash out, which is an option,  
8 will my KYC information still be transferred over to  
9 Binance.

10 MR. SLADE: Your Honor, I object. He already said  
11 he didn't know, but the -- I'm not -- didn't get this  
12 creditor's name, but I don't think she filed an objection.

13 THE COURT: That's okay. I'm going to hear her. I  
14 think as I understand --

15 MS. DIRESTA: No, I did not.

16 THE COURT: -- the submissions -- if I understand  
17 the submissions that were made, the information would be  
18 transferred to Binance; isn't that right?

19 MS. OKIKE: Yes, that's correct, Your Honor.

20 THE COURT: Okay. Even if --

21 BY MS. DIRESTA:

22 Q Is that information --

23 THE COURT: Even if this customer doesn't want  
24 anything to do with Binance, Binance would get her  
25 information?

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1 BY MS. DIRESTA:

2 A So I believe that if you elect to go over to Binance,  
3 we already discussed how that would work. I think your  
4 question is if you don't. I believe that the funds stay at  
5 Voyager and you get cashed out at Voyager, if that's what  
6 you elect to do. And then the way it's transmitted, I  
7 believe you can do an ACH or a check, but I would need to  
8 confirm that.

9 Q Okay. So it would be simply everything would stay at  
10 Voyager and then a check would get cut to me directly from  
11 Voyager. There would be no transfer of assets to Binance;  
12 however, there will be a transfer of my KYC information  
13 regardless to Binance. Is that correct?

14 A I think I was just informed by counsel that yes, the  
15 KYC information will be at -- they'll be provided to  
16 Binance, but under the scenario that you're highlighting, I  
17 think, you know, Binance would not be the distribution agent  
18 in that case that (indiscernible).

19 Q Okay. So my next question is the UCC held a Twitter  
20 Spaces Town Hall on November 4th. And during that town  
21 hall, the subject matter was the FTX deal because FTX had  
22 not gone bankrupt yet. And during that town hall, someone  
23 had asked a question about the percentage of distribution  
24 that people were going to get and I can't remember who on  
25 the panel answered the question. I think it was someone

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1 MS. OKIKE: Correct, Your Honor.

2 THE COURT: Okay.

3 BY MS. DIRESTA:

4 Q And is that information provided in the disclosure  
5 statement?

6 MS. OKIKE: Your Honor, we can check it. It's in  
7 the APA but we'll double check. We did send out our  
8 customer migration protocol which sort of laid this all out.

9 THE COURT: I believe it is, if that's your  
10 question. You may not have seen it or not, but I believe it  
11 is.

12 BY MS. DIRESTA:

13 Q Okay, and then if we're getting cashed out, the  
14 creditors want to get cashed out, what would be the process  
15 for that? And to be more specific, could it be a situation  
16 where we would just get a check directly from Voyager or is  
17 it a situation where all of my assets would still then  
18 technically go to Binance, my crypto assets would go to  
19 Binance, then they convert that to cash and then send that  
20 back over to Voyager and then I get a check from Voyager or  
21 I get a check from Binance? Like, how would that exactly  
22 work?

23 THE COURT: To your knowledge the answer?

24 THE WITNESS: I think I know most of it, but there  
25 was a lot of if this then that.

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1 from FTI, but they basically said that for every \$20 million  
2 dollars that FTX was giving Voyager as part of the sale, for  
3 every \$20 million, it only equated to about 1 percent of the  
4 creditors' recovery. So with that information, since  
5 Binance is only offering \$20 million, which is way less than  
6 what FTX was offering, then doesn't the same logic hold true  
7 that we're only getting about 1 percent additional recovery  
8 with the Binance deal?

9 A Roughly. Yes. You're correct. And it's -- but it is,  
10 \$20 million is a significant amount of money in general, but  
11 there is a large claim pool so that just gets to the math  
12 that you're highlighting. But I --

13 Q Okay --

14 A -- can't speak for FTI, but I can speak to the math.

15 Q Okay. So then earlier in the hearing, someone asked  
16 you the question of the \$20 million that Binance is  
17 offering. Is that all going to be going to the creditors or  
18 would some of that be spent on some administrative cost, and  
19 you didn't really answer the question. You just said that  
20 the cash is, you know, fungible, which means it can really  
21 go anywhere, right? Like there's no guarantee that all of  
22 that cash is going to go to the creditors. So even if all  
23 of the cash did go to the creditors, it's only 1 percent of  
24 our recovery and if, say, only \$10 million of it goes to the  
25 creditors because the other \$10 million is spent elsewhere,

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1 then that drops down to like 0.5 percent or maybe none of it  
2 goes to us and it drops down to 0 percent.

3 So I set this up to ask this question. How is it then  
4 that the Binance deal is actually a better option than the  
5 toggle option, when the lawyers are constantly saying that  
6 you guys are trying to get the most amount of recovery in  
7 the shortest period of time, when the recovery seems to be  
8 the same with the Binance deal and the toggle option and  
9 then the shortest period of time is the toggle option? So  
10 how is the Binance deal better than toggle option, given  
11 everything I just laid out?

12 MR. SLADE: Your Honor, I object. That was a  
13 speech, not a question and he answered it when it was asked  
14 the first time.

15 THE COURT: Well, I'll sustain the objection, in  
16 part, because the -- there's a false premise in the  
17 question, which is that somehow if \$20 million more is paid  
18 by Binance, that it's not really \$20 million more. Whatever  
19 the professional fees are, whatever other expenses there are  
20 of the estate, they have to be paid and they have to be paid  
21 if there's a toggle deal or if there's a Binance deal. It  
22 actually makes no sense to ask where the \$20 million will  
23 go, because all of the expenses will be the same but in the  
24 Binance transaction, there will be \$20 million more.

25 Now I understand that you don't think that that's

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1 and I understand that percent is not a significant number, 1  
2 percent, but it is higher. It is better. And \$20 million  
3 in general is a lot of money. And then furthermore, the  
4 support of the coins is very important. So those are two  
5 reasons, at least two reasons.

6 Q Okay, you're saying the support of the coins and I'm  
7 kind of confused because my understanding is with the toggle  
8 option, is just the Voyager app opens up and then people can  
9 attach their wallet and withdraw their crypto and then now  
10 it's theirs. They have it. It's been distributed to them  
11 or if they choose to cash out, then they can, you know, get  
12 the cash.

13 So how is that not a better option than going through  
14 all this trouble of, you know, moving over to Binance,  
15 especially when someone else said, I can't remember if it  
16 was someone at Kirkland just earlier in this hearing that  
17 Binance is essentially just a distribution agent. Why can't  
18 Voyager act as its own distribution agent with the toggle  
19 option and just open up the app, let people plug in their  
20 wallets so that they don't lose their coins or if they want  
21 to cash out, give them that option? Why can't we do that?

22 THE COURT: You can answer.

23 BY MS. DIRESTA:

24 A Yeah, you're asking my opinion on which one is better.  
25 The Binance transaction is better than the toggle plan. The

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1 much in terms of how -- as a percentage matter it affects  
2 recoveries. That I understand. But the premise of your  
3 question that somehow it will be used for some other  
4 expenses and therefore not available, well, money is  
5 fungible. Those expenses have to be paid from somewhere.  
6 Necessarily, if there's \$20 million more, then there's \$20  
7 million more for creditors. There's no other way to do the  
8 math.

9 Now, if you want to ask him, why are we doing this  
10 just for a 1 percent increase in creditor recoveries, that's  
11 fine. Go ahead and ask him that.

12 MS. DIRESTA: Okay. Thank you, Your Honor.

13 BY MS. DIRESTA:

14 Q So why are we going through all of this struggle and  
15 spending all of this time and money for a 1 percent recovery  
16 to creditors when the toggle option is obviously faster and  
17 almost equivalent?

18 A So 1 percent is \$20 million, as you already just  
19 generally agreed on. I think that's number one. Number  
20 two, Binance supports all of these coins, so there are  
21 roughly 35 coins that are unsupported and our concern is  
22 that in an unsupported format that you're going to get, you  
23 will get to the best of my knowledge and market experts, you  
24 will get less money. So to the extent that you can  
25 effectuate this transaction, \$20 million in my opinion is --

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1 toggle plan is a contingency plan.

2 THE COURT: I think the question was, the coins  
3 that will be made available through the Binance plan. Can't  
4 they all, all of them, be made available through the toggle  
5 plan? And if that's right, why don't we just do the toggle  
6 plan? I think that -- you think you said they can't --

7 MS. DIRESTA: Thank you, Your Honor.

8 THE COURT: -- you need to explain what you mean  
9 when you talk about unsupported coins --

10 THE WITNESS: My --

11 THE COURT: -- and what the difference would be in  
12 the in-kind distributions that you could do under the toggle  
13 plan versus the Binance plan.

14 THE WITNESS: Yes. Thank you, Your Honor. So my  
15 understanding is that there are 35 coins that are  
16 unsupported that do create problems for distribution through  
17 the Voyager platform. So that's the first answer. And then  
18 secondly, I think the question is, you know, why are we  
19 doing this. I think the answer is that it is mathematically  
20 better and I think we had that discussion earlier.

21 THE COURT: What do you mean when you say they're  
22 unsupported?

23 THE WITNESS: My understanding is that on the  
24 Voyager platform, you have issues in terms of distribution  
25 and support of 35 coins. It's just what's been represented

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to me in terms of distribution and I think the benefit of the Binance plan is that all coins are supported. And not all coins are -- it's not as if they're all on one universal exchange. It's, there are multiple exchanges. So there's some exchanges where some coins are more obscure and unfortunately, it would not be equal footing to the extent that one customer who is pari passu with another customer but has different coins may be adversely affected.

THE COURT: So in other words, under the Binance deal, people who want in-kind distributions can get them no matter what their coins are. Under the toggle deal, there are certain kinds of coins you would not be able to do an in-kind transfer on?

THE WITNESS: That's right, Your Honor.

THE COURT: Okay.

BY MS. DIRESTA:

Q Okay, so as a follow-up question to the unsupported coins on Voyager, I'm sure, given all of the developers that not only Voyager has or that, you know, out there in the industry, that there is a very simple way to make this unsupported crypto become supported, because if Binance is doing it, right, they have the capability to do it, then I'm sure Voyager should be able to have the capability of doing it. So why doesn't Voyager just support the unsupported coins? What is the problem there? Why can't we do that?

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are saying is accurate.

MR. SLADE: Your Honor --

BY MS. DIRESTA:

Q So is there a way for us to get information like that?

MR. SLADE: Your Honor, I object. That's not a question. And every creditor had the option to take discovery and did not.

THE COURT: Well, let me ask you, are you planning to offer any testimony from anybody else that can explain in more detail what the problems are in terms of the unsupported coins? It is after all, one of the bases on which you kind of touted the Binance deal as being better.

MR. SLADE: So we have one other witness that could probably speak to that in some degree, but it's a, I mean, it's a highly complicated process and it's probably different by coin. There's 35 separate coins, so I don't think we have anybody here today that can explain for each of the 35 coins what would have to happen for the Voyager platform to support it.

THE COURT: All right. Well, we'll see what your other witnesses can do, but it sounds like this witness has exhausted his own technical ability to explain the issue. Am I right about that?

THE WITNESS: Yes, Your Honor.

THE COURT: Okay.

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A Your Honor, this -- I'm sorry, this doesn't just magically happen. You'd have to have developers. You'd have to spend more time. You'd have to figure out a methodology that everybody would agree to, to do that, and in my opinion, that delay is -- will further delay distribution to unsecured creditors.

Q Is there a way for us creditors or for you guys to provide exactly what those steps would be and how long it would take to make something unsupported become supported?

A I'm sure I (indiscernible).

THE COURT: Are you capable of answering that question or would somebody else has to answer?

THE WITNESS: I'm not capable of answering all the technical abilities to change from supported to unsupported coins, but I have a general understanding that it will take some time, effort, and money.

BY MS. DIRESTA:

Q And the thing about those vague answers is that, like, anybody can give a vague answer and I'm just supposed to be satisfied with it and trust you on that, but I would really like to see the evidence laid out, you know, kind of like how crypto has white paper that lays out the plan of how it's going to function, how it's going to work. So I'd like to see what that plan is and what the timeframe is and how much it's supposedly going to cost to see if what you guys

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THE WITNESS: Thank you, Your Honor. I'm done.

THE COURT: Okay. Anybody else on the phone?

MS. DIVITA: Good afternoon --

MAN 1: Your Honor -- ladies first.

MS. DIVITA: Thank you. Good afternoon, Your Honor. This is Michelle Divita and like to ask some questions related to some trustee comments made by the witness.

THE COURT: Okay.

CROSS EXAMINATION OF MARK RENZI

BY MS. DIVITA:

Q First question, did your due diligence related to the Binance transaction include any data privacy considerations?

A I do not personally conduct any data privacy due diligence.

Q Are you aware that there is a provision for Binance to purchase customer selfies from Voyager?

A Could you ask the question again, please? Thank you.

Q Yeah. So as part of the Binance transaction, there's a specific provision that allows Binance to also purchase customers' selfies so something, you know, take a picture of your face. That is explicitly enumerated in the purchase agreement. Were you aware that that was a component when you conducted your due diligence?

A I knew that Binance was trying to acquire you know, the

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1 possibility of having new customers that they would have a  
2 good experience on that platform and that that hopefully the  
3 customers would elect to go over the platform and that there  
4 were conditions in doing that. So, yes, I'm generally aware  
5 of it.

6 Q Okay, but you did not identify any risk as part of the  
7 transfer of customer biometric data, correct?

8 A My understanding is that it's laid out in, you know, in  
9 the documents that have been presented here and I can't  
10 speak to whether or not it was biometric or not. I just  
11 can't.

12 Q So generally, the -- your analysis in terms of whether  
13 or not the plan of reorganization is a better option for  
14 creditors versus a liquidation plan, does that analysis or  
15 that model does not contemplate any data privacy risk for  
16 customers, correct?

17 A I think the analysis stands on its face and it's been  
18 voted by 97 percent of customers that did vote, that they  
19 accept the terms and conditions of the plan. And then  
20 furthermore, I'm not a data security expert. So I, you  
21 know, I can't speak to any questions about that.

22 Q Okay. You mentioned the 97 percent of customers that  
23 did vote. Based on just your professional experience, 6  
24 percent -- is a 6 percent voter turnout for a large customer  
25 class typical?

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1 who signed up already in the Binance plan, she says it  
2 sounds like more people have done that than have actually  
3 voted on the plan. Do you have any idea why that would be?

4 THE WITNESS: No.

5 BY MS. DIVITA:

6 Q Okay. So it sounds like maybe more than 6 percent of  
7 customers are interested in, you know, doing this Binance  
8 transaction, but when you say a majority of customers have  
9 voted in support of plan that contemplates the discrepancy  
10 between the number of customers who signed up versus those  
11 that have voted.

12 A Well, I think --

13 Q Right?

14 A I think people have the ability to elect to vote or to  
15 not to vote and in our country, I believe that's one of our  
16 rights. So -- and you know, to the extent that somebody  
17 didn't vote but elects to go to Binance that seems to make -  
18 - that makes sense from a math perspective. So if you don't  
19 vote and you want to go to Binance, that can be  
20 mathematically true. So I see no logic flaw there.

21 Q Okay. So in terms of customers that aren't signing up  
22 for this Binance, then and there's about 700,000 people in  
23 (indiscernible), is that (indiscernible) roughly correct?

24 THE COURT: She's asking you if there are something like  
25 700,000 customers who have not yet signed up for Binance.

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1 A I can tell you that 97 percent is a very high  
2 percentage of voting in favor of a plan in something as  
3 complicated as this. And since this is the first large  
4 cryptocurrency case in this country, you know, 6 percent  
5 turnout is what it is on its face. I would have liked to  
6 see a larger turnout but people all have the ability to turn  
7 out.

8 Q Do you think or do you have any thoughts in terms of  
9 why, believe someone previously mentioned 175K customers  
10 have opted in to use the Binance platform; whereas, think  
11 only like 60,000 voted in favor of the plan?

12 A I don't understand. I can't understand -- I don't  
13 understand your question. Can you say it again? It's not  
14 very clear what --

15 Q Yeah.

16 A -- asking.

17 THE COURT: She says it sounds like more people --  
18 MS. DIVITA: So --  
19 THE COURT: More people signed up for the Binance  
20 platform than actually voted on the plan. Can you explain  
21 why that might be?

22 THE WITNESS: More people -- Your Honor, could you  
23 -- I just don't follow.

24 THE COURT: Based on the numbers Ms. Okike said at  
25 the beginning of the hearing about the number of customers

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1 BY MS. DIVITA:

2 A I believe there's a period of time in which customers  
3 can continue to sign up, but the numbers obviously will  
4 continue to change over the coming weeks.

5 Q So as of today, then, assuming those customers don't  
6 sign up or sign up and some sort of gathered basis, at least  
7 -- what's the minimum timeframe that those 700,000 customers  
8 could receive a distribution if they did not opt in or sign  
9 up for Binance?

10 A The minimum amount of time to come over, is the  
11 question?

12 Q Sorry, for the cash distribution from Voyager.

13 THE COURT: I'm sorry, we're having trouble  
14 hearing you clearly enough to understand the question.

15 MS. DIVITA: I know, I'm sorry. One second. Is  
16 this better?

17 THE COURT: Try again.

18 MS. DIVITA: Is this better?

19 THE COURT: I won't know until you try the  
20 question again.

21 THE WITNESS: And slower, please.

22 MS. DIVITA: Okay --

23 THE COURT: Maybe a little slower.

24 MS. DIVITA: I'm sorry.

25 BY MS. DIVITA:

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1 Q So this is in the context of the timeline of creditor  
2 customer recovery. If 700,000 people today have not signed  
3 up for Binance and I understand that they have three months  
4 to sign up, assuming no one signed up for those 700  
5 customers, what is the soonest they can receive a cash  
6 distribution from Voyager?

7 A The difference in time? I believe that the Binance,  
8 the Binance plan is the most expedient way for distribution  
9 to customers, if you elect to go to Binance. I think the  
10 toggle will take longer, but hopefully not much longer.

11 THE COURT: I think she's saying --

12 BY MS. DIVITA:

13 Q So if you elect to go to Binance.

14 THE COURT: I think she's asking if you don't sign  
15 up for Binance, when do you get your cash?

16 BY MS. DIVITA:

17 A I believe it's before June under a toggle plan, so --  
18 but in a Binance transaction, hopefully it's effective, goes  
19 effective in the middle of April.

20 Q So is there a way to opt out of the Binance plan? So  
21 for example, I'm not signing up for Binance. If I -- so I  
22 have three months to sign up. I know that I don't want to  
23 sign up. Am I receiving a distribution three months from  
24 April or is it -- is there an option for me to receive a  
25 distribution sooner?

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1 MS. DIVITA: That is well said. That is my  
2 question.

3 THE COURT: In other words, if you converted to  
4 Chapter 7, would people get cash sooner than what they would  
5 get -- sooner than three months?

6 BY MS. DIVITA:

7 A I think the issue if you convert to a Chapter 7 is not  
8 -- number one, I think it does take longer than the Binance  
9 plan. Number two is that if you immediately -- and as Your  
10 Honor read (indiscernible), if you have to distribute in  
11 cash, that really will have issues in terms of the current  
12 market and it will have a significantly lower recovery.

13 So, it's an issue of timing and overall recovery. So,  
14 I am certain that if you have to monetize obscure  
15 cryptocurrency assets quickly, that the performance on that  
16 recovery is going to be significantly diminished and in some  
17 cases, you know, over 50 percent reduction. And that's from  
18 market makers.

19 So, the concern is that as you think through all  
20 customers being treated equally, ones that have more obscure  
21 cryptocurrency certainly bear the brunt of (indiscernible)  
22 transactions, monetization.

23 Q Got it. That's actually very helpful and kind of  
24 segues me into my next question. So, you're saying that the  
25 rebalancing approach is the same under the Binance

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1 A I believe the timing is before June, so -- the exact  
2 amount of time, I don't have in front of me.

3 Q I'm just trying to get to, you know, extending the  
4 timeline for creditors when we have 700 creditors that  
5 aren't opting in to an expedited timeline. And this is in  
6 comparison between the plan of reorganization and the  
7 liquidation.

8 A Your Honor --

9 THE COURT: I'm not sure that's a question. Let  
10 me ask Ms. DiVita, what exactly is your question?

11 MS. DIVITA: I am just trying to clarify the  
12 timing. So, one of the assumptions in why this plan of  
13 reorganization is preferable for creditors is because it  
14 expedites the timeline for recovery. But based on the  
15 numbers as they are presented today, it sounds like this 175  
16 (indiscernible) people, that's not a large portion and  
17 doesn't necessarily support the contention that a majority  
18 of creditors are looking at or interested in an expedited  
19 timeline. And to just kind of further maybe drill down on  
20 that point. But I don't know --

21 THE COURT: So, if I understand the question for  
22 the witness, it is if customers who don't want to go to  
23 Finance have to wait three months to get cash, is that  
24 longer than it would take to get cash if we didn't have a  
25 plan?

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1 transaction and the Chapter 7 liquidation with the trustee?

2 A No.

3 Q Okay, so it's different.

4 A I'm not saying that. I'm saying that the rebalancing  
5 is optimizing what's going on in the market right now,  
6 trying to do it in the least disruptive way. That is what  
7 we're doing right now. I think under a liquidation, Chapter  
8 7 liquidation, the timeline to monetize those assets has to  
9 be quicker to monetize that and you will have a  
10 significantly lower recovery.

11 Q Because --

12 A Because you have to convert into cash.

13 Q Got it. So, you're talking about the marketability of  
14 the assets.

15 A Right. I mean, bitcoin has --

16 Q Okay.

17 A Sorry. Go ahead.

18 Q Oh no, go ahead.

19 A As we testified earlier and as a fact, Bitcoin has a  
20 much deeper market in market (indiscernible) second largest  
21 market (indiscernible), my understanding, for  
22 cryptocurrencies.

23 Q So, I guess I don't exactly follow how marketability  
24 differs between Binance and liquidation. Is it because  
25 Binance is just getting a transfer of these more volatile or

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1 less widely held cryptocurrencies?

2 THE COURT: I think what the witness has said is  
3 that under the rebalancing approach, the Debtors can spread  
4 transactions over time to avoid the kinds of immediate  
5 impacts on the market that you would have if you had to sell  
6 everything all at once. Is that right?

7 THE WITNESS: Yes, Your Honor.

8 BY MS. DIVITA:

9 Q Okay, that is very helpful. So, then in terms of the I  
10 guess sale or rebalancing act, couldn't -- I guess since the  
11 assets aren't one to one, like this is an exercise that  
12 could have been started well before the Binance transaction,  
13 correct? And the marketability risk isn't specific to  
14 Binance, kind of been known from the beginning, right?

15 A Well, I can't answer all of your questions the same  
16 way. So, the first question is could we do it during the  
17 pendency of the case. We were not authorized to do it. It  
18 took some time to get authorized. There are certain  
19 protocols to do it. There are safety procedures that needed  
20 to be done. We have to make sure that we are in compliance  
21 with the APA. So, rebalancing is a very regimented process  
22 to be the least disruptive that we can be to the marketplace  
23 to monetize assets in a way where you can receive those  
24 coins in kind and then be the least disruptive to the  
25 marketplace. So, that process is ongoing. And you're

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1 even better in terms of the recovery because of the way it's  
2 being done, which is being done in a very regimented process  
3 and to be the least disruptive for the market.

4 Q Got it. So, the tax benefits under a distribution in  
5 kind offsets any really purchaser or buyer risk I guess kind  
6 of in -- so there are securities risks, there are regulatory  
7 risks, you know, as we've seen from the FTX transaction.  
8 There's liquidity risk. And so, you're saying that the  
9 preference of customers to get their cryptocurrency in kind,  
10 which is predominantly driven by a tax benefit -- which I  
11 don't know what -- we'll say 35 percent -- that offsets any  
12 quantified risks, transaction risks?

13 A I wouldn't characterize my testimony as I understand  
14 everybody's tax basis. All I can say is that there is a  
15 preference for crypto in kind and that does have the  
16 advantageous aspect for some that have a tax basis that  
17 would prefer to receive it in kind. There are, as you  
18 pointed out, over 700,000 customers. I can't speak for all  
19 of them, but we have taken into consideration the issues  
20 that have been brought before us, and the preference is in  
21 kind. That's one.

22 And then two, because of market conditions, if we had  
23 to liquidate all crypto in due cash, we think that the  
24 recovery levels would be significantly lower, at least 20  
25 percent lower, because of the items that I've already

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1 right, it is not created to be one to one. There are some  
2 coins that we have too much of them and we will sell them,  
3 and then we will buy other coins to rebalance the entire  
4 portfolio.

5 Q Got it. So, the rebalancing is not -- it's required  
6 for both -- I guess both methods. But one has to be  
7 effectuated quicker?

8 A I'm not sure of the exact question. But I think  
9 rebalancing is important because for, among other things  
10 that I've heard on the town halls is that receiving, pulling  
11 in kind is one of the preferences of the majority of  
12 customers instead of cash because it might have adverse tax  
13 consequences. And I don't know what those numbers would be,  
14 but that's been expressed by multiple customers. And we  
15 designed the plan in concert with the unsecured creditors'  
16 committee advisors to make sure that we were thinking about  
17 issues such as that to make sure we can do distribution in  
18 kind to the best of our ability. And that's what the  
19 Binance plan calls for. And it supports all the coins.

20 Q So, that --

21 A So, it's not just one factor for this plan.

22 Q Yeah.

23 A The plan is to try to do the best. One is to do the  
24 best in terms of maximizing value. It's at least \$20  
25 million better just on the face of it. The execution is

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1 testified to.

2 Q Okay. This is my last question then.

3 A If you can understand, like, you're not flooding the  
4 market with coins if you rebalance it.

5 Q Right.

6 A You're selling all into cash, you're flooding the  
7 market with more coins.

8 Q Got it. So, you have to flood the market under Chapter  
9 7.

10 So, then I guess this is my last question. In terms of  
11 -- you mentioned that when you did your quantification, your  
12 accounting for all these various marketability, rebalancing,  
13 et cetera, but you also mentioned that this analysis didn't  
14 include any quantification of data privacy risks. Did it  
15 include any other adjustments for risks such as securities,  
16 solvency, anything like that in your calculation?

17 A I think I already testified to that in terms of  
18 regulatory bodies and that risk. That's not been quantified  
19 mathematically, but it's described that obviously there are  
20 -- you know, the regiment for regulation for cryptocurrency  
21 continues to be worked on right now by governmental  
22 agencies. So, it's hard for me to opine on that because I  
23 don't know the outcome and I don't think many do know the  
24 outcome at this point.

25 Q So, risks inherent to a cryptocurrency transaction were

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1 not quantified even though they don't exist in a liquidation  
2 context? But only -- I guess they do, but only in a bad  
3 way. And that's because you're flooding the market.  
4 A (indiscernible). My testimony stands on its face. I  
5 can't -- the way you just described things, I was confused  
6 by it, honestly.

7 Q Okay, that's fine. I'm done. Yeah. Thank you.

8 THE COURT: All right. Is there anybody else --

9 MS. WALL: Hi, this is Jennifer Wall.

10 THE COURT: Who is it?

11 MS. WALL: This is Jennifer Wall. I am a creditor  
12 and wish to speak.

13 THE COURT: Okay.

14 MS. WALL: May I speak, Judge Wiles?

15 THE COURT: Yes. You can ask questions.

16 MS. WALL: Okay. Thank you very much.

17 CROSS-EXAMINATION OF MARK RENZI

18 BY MS. WALL:

19 Q I have heard about the in-kind and that that is the  
20 majority for the base of the Voyager creditors. However, I  
21 am in the state of Texas and I want my claims to be in kind,  
22 but Binance does not support Texas and I have not heard from  
23 Texas if it's allowed. And what I have gleaned is that  
24 (indiscernible) probably won't be allowed.

25 So, from a toggle perspective, wouldn't it be better

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1 their coins off of Voyager.

2 Another question that I have -- and I didn't know  
3 if you've been speaking or testifying -- you made somewhat  
4 of I think an absolute statement as saying that by going  
5 with Binance, it's the most efficient and everybody receives  
6 their coins in kind (indiscernible) or their cash, but you  
7 just said that it's going to be six months for Texas  
8 residents and the other three unsupported states to  
9 potentially get their money back or their coins. And the  
10 odds of giving all of the regulations (indiscernible) not  
11 only from a national perspective but also from a state  
12 perspective, I kind of see that highly unlikely. So, I  
13 guess I'm just saying that I don't think that you're really  
14 speaking in the four states that are not going to be  
15 supported by Binance. I don't believe I'll really be  
16 equally represented here. Okay. Sorry about that.

17 THE COURT: Okay. That's not really a question.

18 That's more an argument. And we --

19 MS. WALL: Okay.

20 THE COURT: We'll have argument at a different  
21 point in the proceeding. Right now --

22 MS. WALL: Oh, sorry about that.

23 THE COURT: Okay.

24 BY MS. WALL:

25 Q Okay. My other question will my KYC information be

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1 for those individuals that are in the state of Texas and the  
2 other three non-supported states to be able to receive their  
3 coins in kind through the toggle perspective and not have  
4 that tax issue being cashed out?

5 A Number one, I think that there is a period of time for  
6 Binance to get the proper authorization to distribute in  
7 kind. I believe that's up to six months. So, -- and  
8 hopefully there will be a quick resolution to that. But I  
9 can't speak to the regulatory authorities in Texas in  
10 regards to allowing Binance to do that for you in Texas.

11 A Okay. (indiscernible).

12 THE COURT: Would Voyager -- would Voyager itself  
13 be under the same restrictions as Binance in Texas in terms  
14 of the ability to distribute to customers?

15 THE WITNESS: (indiscernible).

16 THE COURT: Okay.

17 MS. WALL: Okay. I appreciate that statement,  
18 Your Honor. Thank you for that. Because that is another  
19 question I've had, is why can't, for those states that are  
20 not supported -- and I understand that there were issues  
21 late in the game, if you will, with Voyager that none of us  
22 -- none of the residents in Texas knew about. We thought  
23 all the license was there. And now we're being penalized.  
24 It would be appreciative if the State of Texas and Voyager  
25 could come to an agreement to allow those customers to get

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1 sent to Binance even though I'm in Texas?

2 A I'm not sure, Your Honor.

3 THE COURT: The witness doesn't know the answer.

4 MS. WALL: Okay. So, can that be (indiscernible)?

5 THE COURT: So, what?

6 MS. WALL: Could that be -- can that be verified,  
7 if my KYC information will be sent to Binance? Because I  
8 would prefer if we're not allowed to use Binance, that that  
9 type of information not be sent to Binance.

10 MR. SLADE: We'll answer her question, Your Honor.  
11 We'll get to the answer.

12 THE COURT: What is the answer?

13 MS. OKIKE: Your Honor, all customer information  
14 is transferred to Binance under the purchase agreement.  
15 Under the customer agreement, we do have the right  
16 (indiscernible) customer information. And that's what we're  
17 relying on with respect to that transfer.

18 UNIDENTIFIED SPEAKER: Isn't that Delaware,  
19 California data privacy code with consumers --

20 THE COURT: Whoever is -- you can make your  
21 arguments later, but don't interrupt witness testimony with  
22 argument. Okay?

23 BY MS. WALL:

24 Q Okay. So, my last question. So, what I'm hearing is  
25 that that will be verified, or that that is what's going to

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happen. My personal information will be sent to a company that I will not be able to transact with. Is that correct?

MR. SLADE: Just to clarify, the APA provides that that information will be provided to the extent permissible under applicable law. That's Docket Number 835 if you look at Page 16. That's that part of the APA.

MS. WALL: Okay. And my last question -- and thank you very much for the time to speak today.

BY MS. WALL:

Q My last question is from the tax perspective, for all of us that have invested X amount of money and we're certainly not getting that out, are we going to be able to use those amounts for a tax loss over the coming years?

A I'm not an expert in tax basis, and it's hard for me to answer that for all of the customers.

Q Is there a way that that question can be taken back and looked at? Because I am hearing different things of yes, we will be, no, we won't. And if there's anything -- and realizing that through Judge Wiles' statement, this is the first cryptocurrency case, so it would be nice to know that we're -- we're victims of what has occurred, and we would not be able to use this as a tax loss would be the second impact on us.

THE COURT: There are disclosures in the disclosure statement about tax issues. But in the end, the taxing

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(indiscernible) that the Binance is the best deal here for the creditors. And some of these questions of the risks of pushing all of the creditors over to Binance have not been answered to my satisfaction. Has anyone evaluated whether Binance comingles all user funds, which was significant because of why we're all suffering currently under the Voyager model of the same action.

A I believe they have the ability to (indiscernible) the assets and then also rehypothecate assets. Yes.

Q So, all user funds, are they individualized to where the users have ownership of it, or are they comingled in the same manner that Voyager did?

MR. SLADE: I'll object for lack of foundation, Your Honor.

THE COURT: Overruled. Do you know the answer to the question?

MR. HENDERSHOTT: Well, they should --

THE COURT: The objection is overruled. Do you know the answer to the question?

BY MR. HENDERSHOTT:

A I believe that the funds are going to be in effect a custody -- you know when they're transferred over into custody. But to the ability -- to the extent that there is a wallet that's a broader wallet, I suspect it could be comingled in a broader wallet, but still in the custody

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authorities will take their own positions on these things, and the Debtors aren't really in a position to kind of make any assurances or guarantees as to how any individual customer's taxes will work, I'm afraid.

MS. WALL: Well, those are all my questions. Thank you very much.

THE COURT: We're nearing our lunch break. We probably passed on. I would have preferred a lunch break. Is there anybody else on the phone that has questions that have not already been asked of this witness?

MR. HENDERSHOTT: I do, Your Honor.

THE COURT: Who was that?

MR. HENDERSHOTT: Tracy Hendershott, pro se creditor.

THE COURT: Okay. Go ahead, Mr. Hendershott.

MR. HENDERSHOTT: Thank you.

CROSS-EXAMINATION OF MARK RENZI

BY MR. HENDERSHOTT:

Q Mr. Renzi, I thank you for this time. I know this is quite painful for all of us (indiscernible). So, I do want to extend my gratitude.

But when we first started, I had missed what your role is and who you work for.

A I lead BRG in financial advising for the company.

Q All right. Thank you, sir. So, your testimony is

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perspective. I don't know -- I don't think it's going to be in individual wallets (indiscernible).

CLERK: Judge, I believe the parties are falling off the line. I believe Mr. Hendershott will probably call back if you want to conclude with the witnesses before you take the break.

THE COURT: We've reached our four-hour time limit on Court Solutions. Well, that's a good time to take a lunch break then. And we'll resume at 2:40. Okay?

UNIDENTIFIED SPEAKER: Why won't you guys let the --

(Recess)

THE COURT: All right, please be seated. Mr. Renzi, please retake the stand. You are still under oath. Do you understand that?

THE WITNESS: yes.

THE COURT: Okay. I believe before the automated telephone system cut you off, Mr. Hendershott, I believe you were in the middle of asking your questions.

MR. HENDERSHOTT: Yes, sir. Thank you. And I was glad to hear it was automated. (indiscernible) that got booted out, but (indiscernible) clarified that for me, so I was happy to hear that. Hope everyone had a good lunch.

BY MR. HENDERSHOTT:

Q So, picking up, Mr. Renzi. When we left off, we were

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1 talking about your beliefs and testimony about Binance as  
2 (indiscernible) for all of us creditors. And by the way,  
3 are you perchance a creditor yourself, Mr. Renzi?

4 A No.

5 Q Yeah. I mean, that's frustrating when we keep getting  
6 told over and over again by others (indiscernible). But I'm  
7 glad that (indiscernible) pick your brain and utilize your  
8 expertise here. But let's move along.

9 So, we ended with the comingling of user funds that put  
10 us in this precarious situation right now with Voyager just  
11 exactly over at Binance. I'm asking (indiscernible)  
12 questions that differentiate between Binance and Voyager in  
13 (indiscernible) environment. And with Binance, my  
14 understanding is the sole shareholder of Binance U.S. is  
15 Binance Global. Is that your understanding as well?

16 A It's my understanding.

17 Q Yeah. So, if you were to take any legal action against  
18 the parent company, the holding company, my understanding is  
19 Binance refuses to give any global domicile to be able to  
20 initiate any legal action against. Is that your  
21 understanding doing your due diligence as well?

22 A I'm not an expert on their legal structure.

23 Q So if you wanted to write a letter then just  
24 congratulating (indiscernible) on this acquisition. Is  
25 there a legal headquarters or domicile that you would have

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1 where we can take legal (indiscernible).

2 How about comingling the funds between the affiliates,  
3 between Binance U.S. and the global affiliate, which I  
4 believe has even been confirmed by (indiscernible) publicly  
5 and stated that was in the past, but they have better  
6 controls in place now. Are you aware of that, sir?

7 A I believe they're separate legal entities. I can't  
8 speak to all of the innerworkings of Binance between its  
9 legal entities.

10 Q So, during your due diligence, you never came up with  
11 any discussions about comingling between the U.S. entity and  
12 the global entity that has no legal address?

13 A I don't agree with your statement that they have no  
14 legal address. I just don't know the legal address. But  
15 I'm sure you can find it.

16 Q I would have hoped that you would have done that  
17 previous to this call in due diligence. But I'm asking  
18 about the comingling of funds between the U.S. --

19 THE COURT: Mr. Hendershott. Mr. Hendershott.  
20 Mr. Hendershott.

21 MR. HENDERSHOTT: yes.

22 THE COURT: You've got to stop making comments  
23 after the answers. Just ask questions and get answers.  
24 Okay? You can make your arguments later.

25 MR. HENDERSHOTT: Sure. Can we also have the

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1 identified during your due diligence that you would --  
2 that's the parent company?

3 A I know that we've met with individuals from Binance, at  
4 least my team, in New York City. Or Binance --

5 Q That would be Binance U.S. I'm assuming. Yeah. I'm  
6 talking about the parent company, the single shareholder,  
7 the parent company.

8 A I have not met with the parent company of Binance U.S.,  
9 no.

10 Q So, I didn't ask if you met with them. I asked where  
11 would you send any type of legal or just pleasantry  
12 communication to the parent company for their global  
13 domicile address.

14 A I don't know. I would ask. Happy to look it up.

15 Q That's concerning. One, that the creditors have  
16 expended significant funds on their due diligence, and two,  
17 that you are sitting here testifying to Judge Wiles and the  
18 rest of us that this is the best solution for us.

19 MR. SLADE: Your Honor, I would object. Can we  
20 just have questions and not speeches?

21 THE COURT: Objection sustained. Just ask  
22 questions, Mr. Hendershott.

23 BY MR. HENDERSHOTT:

24 Q Okay, moving on. So, that puts us in a worse scenario  
25 than Voyager, which actually does have a domicile address

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1 witness just answer the questions instead of putting his  
2 comments in?

3 THE COURT: I think the witness has been fine.

4 So, just ask your questions and the witness will answer your  
5 questions.

6 MR. HENDERSHOTT: Okay.

7 BY MR. HENDERSHOTT:

8 Q So, again, I haven't received an answer. The  
9 comingling of funds between the U.S. entity and the global  
10 entity.

11 A I don't know if they are comingling funds between the  
12 U.S. entity and global entity.

13 Q That did not arise in your due diligence efforts?

14 A We have discussed many things with many different  
15 people. I am not the sole person doing due diligence on  
16 Binance.

17 Q But you are the leader and the chosen representative to  
18 answer our questions. Moving on.

19 No declarations --

20 THE COURT: Mr. Hendershott. Mr. Hendershott.  
21 Stop making comments after the witness testifies. Ask  
22 questions and just get answers. Okay?

23 MR. HENDERSHOTT: Okay. Sorry, sir.

24 BY MR. HENDERSHOTT:

25 Q So, moving on. No declarations have been

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(indiscernible) practices, which we already heard from the State of Texas. We've already seen several, numerous agencies state this as their concerns of Binance. And we also heard from the attorney general's office in Texas that Binance hasn't even attempted to file any type of documentation highlighting their internal controls or practices.

In your due diligence, sir, have you been able to identify the internal controls and practices of Binance?

MR. SLADE: Your Honor, I object to numerous parts of the preface of that question (indiscernible). No facts in evidence to support those.

THE COURT: Well, let me also ask --

MR. HENDERSHOTT: We have the attorney general (indiscernible). Can you maybe clarify with her?

THE COURT: No. I want you to not interrupt me when I'm speaking.

MR. HENDERSHOTT: I'm sorry, sir.

THE COURT: Let me ask the Debtor's counsel. In terms of due diligence, is this your primary or your only witness on this point?

MR. SLADE: No, Your Honor. Mr. Tichenor will also be testifying about due diligence.

THE COURT: Okay.

MR. SLADE: They serve different roles. Mr.

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MR. HENDERSHOTT: Can I ask follow-up questions for that, Your Honor?

THE COURT: You can ask follow-up questions.

BY MR. HENDERSHOTT:

Q Mr. Renzi, I find your statement that you think they have auditors as defective and concerning, that you are sitting her unequivocally testifying that Binance is the best solution for us, but you think that they might have financial auditors, which is --

THE COURT: Okay. That's not a follow-up question. That's a follow-up argument. Please try to keep the difference in mind. Ask him what he knows. If you don't like what he knows or if you don't think he's done enough, you can argue about it later. But just ask him what he knows and what he did.

MR. HENDERSHOTT: Okay. Thank you, sir.

BY MR. HENDERSHOTT:

Q So, Binance. How about USD dollar banking relationship for onboarding and offboarding of fiat? Is Binance global, parent company, sole shareholder of Binance U.S. (indiscernible) that relationship currently?

THE COURT: Do you understand the question?

THE WITNESS: I -- I don't know the answer.

MR. HENDERSHOTT: Should I move on or is this going to be the response for all the questions with Binance?

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Tichenor is the investment banker. Mr. Renzi is the manager advisory. They work together.

THE COURT: Okay. So, Mr. Hendershott, when you ask a question, it's not proper to kind of first make an argument and then ask your question. It's not proper to kind of state what you believe to be facts and then ask a different question. Just ask questions. Okay? Ask him what he knows and what he did. And if you think it was deficient --

MR. HENDERSHOTT: Sure. I'll --

THE COURT: If you think it was deficient later, you can make arguments about what you think is deficient. You can ask him what he found out and what he checked and what he knows.

MR. HENDERSHOTT: Okay. Thank you, sir. Thank you for the guidance.

BY MR. HENDERSHOTT:

Q Okay. Going back to why Binance is better than Voyager question. So, the next one, no financial auditors for the parent company, is that your understanding as well, sir?

A I have not reviewed financial audited statements.

Q Is that because Binance has no financial auditors?

A I can't answer the question, Your Honor. I think they have auditors. I just don't know specifically. They have accounting functions for sure.

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THE COURT: I don't know how to predict that.

MR. HENDERSHOTT: Okay, well how about just one last one.

BY MR. HENDERSHOTT:

Q You are aware, Mr. Renzi, that Binance is actually paying (indiscernible) for the various national -- possibly with some states, I'm not clear on that one. Certainly, at the national level for regulatory noncompliance settlements.

A If the question is am I aware that they're trying to be in compliance with state regulations, I think that they are trying. And to the extent that there's anything that's deficient, I'm sure they're going to try to cure that. But to be specific about it, I don't know specifically any state fines that they're addressing right now. I'm sure that it's an ongoing thing in all cryptocurrency to make sure that they're addressing any new (indiscernible).

Q Okay. So, you're sure that they are collaborating with state regulatory agencies. Were you in the courtroom or available when the attorney generals of Texas stated that they have taken no action of filing regulatory documentation?

A Well, in discussions with the company and their advisors, my understanding is that Binance is trying to cooperate to the best of their ability. I was not in the courtroom in regards to what they heard in the Texas

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1 courtroom that you referenced. But I believe they --

2 Q (indiscernible).

3 A -- were operating as a company in the United States

4 appropriately.

5 Q I was talking about this courtroom, sir. Earlier when

6 the Texas attorney general's representative clarified

7 (indiscernible) they had not filed any documentation with

8 Texas. In the courtroom, did you hear that portion of the

9 trial?

10 A I didn't hear his question, Your Honor.

11 THE COURT: He's asking if you heard the question

12 asked by the Texas attorney, which question asserted that

13 Binance had not made any filings in Texas.

14 THE WITNESS: No.

15 BY MR. HENDERSHOTT:

16 Q Okay. So, after identifying probably six very

17 significant regulatory concerns of noncompliance worse than

18 with Voyager, all of those questions I asked you previously,

19 Voyager could comply with, yes. Six of them Binance could

20 not. Can you please reiterate again why you feel Binance is

21 a safe and the best methodology to be pushing all of those

22 creditors into?

23 MR. SLADE: Again, I object. That's a speech and

24 it assumes facts not in evidence.

25 THE COURT: Just answer the question. Why you

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1 names. But I think just a numerical number would be

2 beneficial. And the follow-up question is did each one of

3 the backup bidders refuse to be -- did each one of the other

4 bidders beyond FTX and Binance, did they all refuse to be

5 backup bidders?

6 MR. SLADE: Your Honor, I'm going to object to

7 relevance. It's not relevant to what's before the Court

8 today.

9 THE COURT: Well, I agree. But go ahead and

10 answer the question. Did all of the other bidders decline

11 to be backup bidders?

12 THE WITNESS: I knew that FTX was the best bid and

13 that we did not have a backup bidder and that we had an

14 extensive auction. I believe it was over a week. It may

15 have been up to two weeks for someone to come in as a backup

16 bidder. But we did not achieve that. So, FTX was the

17 highest bid at that point in time.

18 BY MR. HENDERSHOTT:

19 Q Yes. And (indiscernible). I was curious about all the

20 other bidders that participated in that auction. Did all of

21 them refuse to be a backup bidder?

22 A I think I answered the question.

23 THE COURT: I think you did answer the question.

24 MR. HENDERSHOTT: I'm sorry, Your Honor, I didn't

25 hear the answer. I heard that FTX was the number one

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1 think Binance is the safe and better alternative?

2 BY MR. HENDERSHOTT:

3 A I believe that Binance provides the maximum recovery.

4 The Binance transaction provides the maximum recovery to all

5 unsecured creditors. To the extent that that recovery or we

6 have any doubts in Binance, we have the ability to toggle.

7 And then (indiscernible) is the second-best option that we

8 have. So, to the extent that there's a disagreement in

9 construct, I believe that the construct that's set up

10 maximizes recovery for unsecured creditors as demonstrated

11 in my declaration and provides optionality to the extent

12 that there are concerns.

13 Q Okay. So, still you believe Binance is the best

14 solution for creditors is your testimony, is that correct?

15 A I just testified, Your Honor.

16 Q Yeah. Okay. Moving on. Yes, sir?

17 A I was coughing. Excuse me.

18 THE COURT: Go ahead, Mr. Hendershott.

19 BY MR. HENDERSHOTT:

20 Q Moving on. Earlier, there's been fairly extensive

21 conversations about the backup bidding process

22 (indiscernible). You stated that Binance at the FTX round

23 was a backup bidder that they had no interest to be a backup

24 bidder. You did not clarify how many other bidders were

25 there. And we respect NDAs, we don't need to know their

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1 bidder. I didn't hear that all the bidders refused to be a

2 backup bidder. Because that's a critical element, Your

3 Honor. You approved the bidding plan. The backup bidder

4 was included from the beginning, that would have shaved six

5 months off this trial, probably hundreds of millions of

6 dollars if it was (indiscernible). And Your Honor --

7 THE COURT: Stop.

8 MR. HENDERSHOTT: -- a person that's been involved

9 in the (indiscernible) would have been --

10 THE COURT: Just stop. Whether you think that's

11 true or whether it is true makes no difference to what we're

12 doing here today. Right? They didn't have a backup bidder

13 --

14 MR. HENDERSHOTT: It was --

15 THE COURT: Let me finish. Whether that was right

16 or wrong doesn't change the situation we are standing in

17 today and doesn't change in one iota the question of whether

18 we should or shouldn't confirm the plan that is currently in

19 front of us.

20 Today is not about recriminations for plans,

21 different plans that maybe could have been pursued in the

22 past. I don't know what you think is accomplished by any of

23 that, but I promise you it's nothing. You might be upset,

24 but it doesn't have any bearing at all, none, on what we

25 should to today. They could have made the worst mistake --

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MR. HENDERSHOTT: (indiscernible).

THE COURT: They could have made the worst mistake in the history of bidding to have picked FTX and/or not to have had a toggle plan at that time, but it doesn't matter. I can't change the past. Nobody can. We are where we are. And so, your fixated anchor on these points is of no help. Okay? You've got to move on and you've got to address the issues that we're dealing with today.

MR. HENDERSHOTT: From that perspective, Your Honor, just to respond to you. I believe it is relevant. I believe there is no accountability for their actions is your proposal, that we ignore everything that happened in the past. I mean, there was material damages to the creditor class because they failed to follow the bid plan. It's standard practice. And there is a monetary value that can be associated with it. As well as there should be some accountability for their failure to follow it.

THE COURT: There is no issue in front of me today, none, about whether they did something in the past that caused damage for which they should be held accountable. Absolutely that is not an issue in front of me today. It's just simply not.

Now, if you want to say that there's some dishonesty as opposed to a mistake and that it somehow means that even at this stage of the proceedings I should appoint

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that you have sitting in front of you that's on the agenda for today.

THE COURT: He's testified -- he's testified that they didn't have a backup bidder. You want to ask him that same question ten times. You're accomplishing nothing. They didn't have a backup bidder, and they didn't have a toggle plan at the time of FTX. You can ask him that same question a hundred times, and it's the same thing. You're not showing me anything that's relevant to anything I need to do today.

MR. HENDERSHOTT: Yes, Your Honor. I understand. Moving on.

BY MR. HENDERSHOTT:

Q So, again, for the various reasons, that, Mr. Renzi, you highlighted whether Binance is the best bid, you called out that KYC would be required for a liquidation for the release of tokens to the individual creditors and that would only be possible by going through (indiscernible) organization like Binance. So, my question for you, sir, is Voyager has KYC has -- has already been mentioned on this trial. People are concerned about it being shared with Binance. And so, every single creditor -- so could you expand on where is the challenge of Voyager with the preexisting KYC?

MR. SLADE: Your Honor, I object. I don't

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a trustee, that's fine. But I know you're not lawyers, but you have to understand every court hearing is not an open invitation for you to ask for every single thing that you might want without a pending motion, without justification, and without evidence. It is not how a court hearing works. We have specific motions in front of me today. And the primary one is for confirmation of a plan that has been accepted by the voting classes. If there is an objection to that confirmation that is based on the criteria I need to consider in the bankruptcy code, I am more than willing to hear it. But I promise you, recriminations over the FTX negotiations last fall have zero to do -- zero -- with whether or not this particular plan should be confirmed.

If you want to argue that they made a mistake before, therefore I should assume that they're making a mistake again, you can make that argument. But just beating up the witness about why he didn't have a backup bidder is pointless. Do you under?

MR. HENDERSHOTT: I hear you, Your Honor. But you do have an objection or a motion in front of you from the creditors explicitly stating that for cause removal for fraud, dishonesty, and competence and gross management. I believe establishing the sequence of incompetence, gross mismanagement, potentially fraud and dishonesty right from the very beginning for this date is part of the objection

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understand the question. I don't know how the witness could.

THE COURT: I understand the question. He's talked about the provisions in the witness's prior declaration that talked about KYC issues and why the Debtor isn't equipped to pursue them. And he's asking you why not. So, go ahead.

BY MR. HENDERSHOTT:

A Effectively the transaction with Binance is -- they're paying us for those transactions. It's over \$20 million. So, in order to do that, they want to make sure that they have the ability to do, you know, KYC information and make sure there isn't any money laundering or making sure that things are done appropriately.

So, in terms of Voyager, Voyager, if we have to go to the toggle plan does have the ability to distribute some of the (indiscernible). However, not all. And I think I testified to that. And I do think that they have a tremendous amount of information about their customers.

Q So, just so I am clear, Voyager has full KYC

documentation that would allow them to liquidate and return assets directly back to customers?

A I believe they have --

Q Is that correct?

A I'm not a hundred percent certain, but I believe they

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1 have -- I believe they have a significant amount of  
 2 information.  
 3 Q Okay. I must have misheard you earlier when you said  
 4 that was an obstacle then. So, that's great to know they  
 5 have the ability to do that.  
 6 Next question. You -- sorry?  
 7 A I think -- I want to make sure we're clear because I  
 8 don't want to recharacterize my testimony. I think what I'm  
 9 saying is that we have the ability to move to a toggle plan.  
 10 However, there are -- the Binance plan, there's a hundred  
 11 percent support on coins. The toggle plan, we obviously  
 12 have some unsupported coins.  
 13 Q So, I'm curious on that. When you say unsupported,  
 14 Voyager was never an exchange. So, Voyager bought coins  
 15 from true exchanges. What is the obstacle again? I heard a  
 16 statement earlier that all of this programming and  
 17 complexity involved with it, they already had the  
 18 programming to receive the code, to buy the coins from the  
 19 exchange, to allocate that to the client base. And forgive  
 20 my ignorance, I don't understand why it is challenging to  
 21 then take those digital keys and coins and put them back to  
 22 the exchange that they bought them from.  
 23 A They have to invest time and money to make sure that  
 24 those coins are supported. And that is not one of the  
 25 things that's contemplated right now.

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1 are unsupported. So, in order to address them, they would  
 2 have to liquidate them.  
 3 And so, because we understand that customers would  
 4 prefer to have coins in kind, this is an issue. Binance  
 5 wants all the coins.  
 6 THE COURT: And I guess the problem is we're  
 7 having some trouble understanding what being unsupported  
 8 means.  
 9 THE WITNESS: The issue is for the company; they  
 10 cannot make those distributions in kind for those 35  
 11 unsupported ones. That's the simple version of it.  
 12 THE COURT: Okay.  
 13 THE WITNESS: The technical repercussions are  
 14 beyond what I can testify here today.  
 15 THE COURT: Okay.  
 16 BY MR. HENDERSHOTT:  
 17 Q Thank you for that clarification. That was helpful.  
 18 But just so I understand, you can liquidate them as part of  
 19 a rebalancing to U.S. dollars. And so, is that occurring  
 20 actually right now with the \$445 million liquidation that's  
 21 ongoing? These coins are being liquidated to dollars?  
 22 A The company is rebalancing coins now. And to the  
 23 extent that they need to set aside funds (indiscernible) for  
 24 cash, they will be doing so.  
 25 Q And as a liquidator (indiscernible) unsecured --

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1 Q Supported by the exchange that they bought them from?  
 2 A For them to make distributions in those coins.  
 3 Q I'm not saying distributions back to the customers.  
 4 I'm saying about (indiscernible) from. I recall that you  
 5 said that that was a significant obstacle for the  
 6 liquidation process. And I'm confused on why. The bottom,  
 7 it's one way, from the exchange to Voyager. Why isn't it  
 8 not possible for it to go back from Voyager to the exchange?  
 9 A So, the distribution would be made to customers, not to  
 10 an exchange, correct?  
 11 Q We're talking about a liquidation. You said that's why  
 12 (indiscernible) liquidate (indiscernible). I'm sorry, go  
 13 on.  
 14 A I don't know what the question is. I'm sorry.  
 15 Q We're talking about a liquidation. You said that that  
 16 was problematic because there is (indiscernible) for the  
 17 coins to be liquidated.  
 18 MR. SLADE: Yeah, I object, Your Honor. I think  
 19 it's --  
 20 THE COURT: The question is if Voyager was -- if  
 21 people were able to buy these coins in the first place  
 22 through Voyager, why can't they be put in their names by  
 23 Voyager?  
 24 THE WITNESS: The issue, Your Honor, is that  
 25 distribution of these coins by Voyager, they have 35 that

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1 unsupported claims?  
 2 A I am not -- I don't think so.  
 3 Q Okay. All right. So, talking about the liquidation,  
 4 you said that the problem of the toggle -- or actually of  
 5 Chapter 7 liquidation is the risk of collapsing the market.  
 6 You indicate that a trustee would try to dump the entire  
 7 treasury within a day or two, which I have never heard Judge  
 8 Wiles or anyone say that that would be the plan going  
 9 forward. So, I'm very curious why your strong belief is a  
 10 liquidation would collapse the global market of any coin,  
 11 even one with less market liquidity than bitcoin or  
 12 Ethereum. And I am curious (indiscernible) a coin that is  
 13 on Voyager that you would collapse the global market by  
 14 doing a thoughtful and strategic liquidation over a period  
 15 of say two months.  
 16 A I never testified that this would collapse the global  
 17 market of cryptocurrencies, Your Honor.  
 18 Q On a specific coin, sir. You said that it would  
 19 collapse it down in I believe 30 -- I've heard 26 percent, I  
 20 believe. I heard 35 percent. But that would be the  
 21 slippage damage caused by a liquidation or a trustee coming  
 22 in and liquidating because the global market for that  
 23 specific coin could not handle the influx of Voyager's  
 24 volume. So, I'm curious, called out by name, but this is  
 25 not effective for bitcoin or Ethereum. I am curious if you

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can identify a coin where this would collapse a given market in that specific coin.

MR. SLADE: Your Honor, I object again. We're hearing speeches, not questions.

THE COURT: Can you identify a particular coin for which the market would suffer the effects that you had previously discussed?

BY MR. HENDERSHOTT:

A There are a number of coins that -- like Shiba Inu that coin, VGX, if you had to just sell it all immediately into cash, these coins don't have the deep market, and that's an issue. Those are the examples.

Q Thank you, Sir. Shiba and -- can you tell me how much --

A I would say to you I never testified that it would collapse the market. What's important to understand is that the market liquidity is a differentiator. And because bitcoin and eth have a significant amount more market cap and liquidity, it's easier to sell those coins and sell or buy those coins. So, the more obscure coins are difficult to monetize quickly.

Q That's what I'm questioning if you could give examples. And you gave Sheba as an example of that. Do you know what the global market cap is for Shiba Inu?

A I don't have that in front of me.

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monetizing collateral that's harder to -- that has a smaller market cap than the two biggest ones that we've discussed, yes, that's absolutely true. Not only from the -- but more than a dozen advisors and market participants have validated this information.

THE COURT: In terms of the one you identified. Not VGX, the other one. Shiba...

THE WITNESS: There are many -- there's 106 coins, Your Honor.

THE COURT: What is the volume that Voyager holds, and are you aware of any statistics as to what the ordinary trading volume is as to that?

THE WITNESS: I have a chart. It's not in front of me. So, I could answer that, Your Honor, if I can get the chart.

THE COURT: Any objection to him consulting his chart?

MR. HENDERSHOTT: None from me, sir.

THE COURT: Well, let's go ahead.

MR. SLADE: Your Honor, (indiscernible) print a copy.

THE COURT: And if he has any idea what the ordinary trading...

MR. SLADE: Apologize, Your Honor. We're trying to --

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Q I have it open. You know whether I can introduce this right now and it -- I have it open right now. It's 6.7 billion. So, is the volume that Voyager has, even if you liquidated it in a matter of days versus doing it responsibly, or the months, would the volume of Voyager Shiba Inu collapse or significantly drive down the price point of \$6.7 billion market cap?

THE WITNESS: So, how did I testify before, Your Honor? A number of these coins may have significantly larger market caps. By way of example, Bitcoin has a significantly larger market cap. Same with eth. The issue that we're bringing up is that this is not just my opinion, this is the opinion of market makers that, you know, deal with these coins day in and day out. They may have a high market cap, but it's hard to trade them. And those are issues that we've seen throughout in cryptocurrency. And the issue that you have is that if you have to liquidate coins quickly, even more obscure coins, that it will move the market. It will not collapse the market, hopefully will not collapse the market, but it will move the market (indiscernible). That's not only -- that's diligence that's been done by myself, it's been done by their investment banker, Moelis, it's been done by the unsecured creditor committee advisors.

And so, when we talk about the discount to

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THE COURT: I understand.

MR. SLADE: Your Honor, could I have a five-minute recess to find the right files?

THE COURT: Okay. We'll take five minutes.

(Recess)

THE COURT: All right, please be seated.

Mr. Renzi, you are still under oath. Have you had a chance to look up the answer of the question?

THE WITNESS: I have, Your Honor. Thank you for the five minutes.

So, other examples besides VGX of issues in terms of relative market cap and trading issues, BET would be an example, (indiscernible) would be an example, BTT would be an example. STMX would be an example. CKB would be an example, DGB. Those are other examples, to answer Mr. Hendershott's question directly (indiscernible).

THE COURT: And as to Shiba, have you been able to figure out what does Voyager hold and how does that compare to ordinary trading volumes?

THE WITNESS: I think Mr. Hendershott is right, there is still an issue in terms of relative volume. But I am looking at the amount of claims that's \$93 million that I have in this schedule on a dollarized basis. And so, Shiba is less of an issue than the other ones that I just mentioned.

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THE COURT: Okay.

THE WITNESS: But still an issue.

THE COURT: Okay.

BY MR. HENDERSHOTT:

Q So, what's the daily trading volume for Shiba against the Voyager \$93 million Shiba -- assets under management for Shiba specifically?

A I don't have daily. I have seven-day average, \$243 million is their seven-day average volume.

Q Right, average per day. So, a quarter of a billion dollars traded with only \$93 million on voyager, that could be distributed over the course of a month or two. So, did I mishear earlier when you said that the reason why a trustee could not handle this is because it would collapse or reduce --

THE COURT: Are you saying that what Voyager has is more than a third what the average daily trading volume is?

MR. HENDERSHOTT: That's correct. \$93 million total. I'm sorry, I'm not sure who that question was for.

THE WITNESS: To answer your question, Your Honor, they have a claim of \$93 million. And the position is \$70 million approximately. And the average daily trading seven-day average volume is \$243 million. And so, I am not saying that this would collapse the market. I am saying that they

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trustee would a statutory obligation to convert to cash. I don't know of any trustee that would sit around and take market risk and try to figure out how to time those kinds of sales. And what the witness has basically said is that he thinks that the kind of imperative that a trustee would face to sell would be very different from the sort of being able to do it as you think fit in the rebalancing exercise in that there would therefore be a much stronger market effect if were in Chapter 7 than in Chapter 11. That's what I understand that he's testified to so far.

THE WITNESS: Your Honor, I just (indiscernible). Thank you.

MR. HENDERSHOTT: Great. Thank you. And thank you, Mr. Renzi. I will cede the podium. Thank you, sir.

THE COURT: Okay. Is there anybody else on the phone that wishes to cross-examine the witness?

CLERK: Your Honor, there's no one else on the phone (indiscernible).

MR. LOREN: I would like to (indiscernible), Your Honor.

THE COURT: Who is speaking now on the phone?

MR. LOREN: This is John Loren, pro se creditor. Can you hear me?

THE COURT: What was your name again?

MR. LOREN: John Loren.

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will move the market. Especially if it needs to be done quickly.

BY MR. HENDERSHOTT:

Q So, that's -- and thank you for that. I don't see how \$93 million spread out over a month or two can move the market when it's doing a quarter of a billion every day. But I keep hearing that if you have to do it quickly -- am I missing something that a trustee being appointed would have to liquidate everything in a day or two? Did they not have the same courtesy to be able to distribute this over the course of a month or two like we're doing with the rebalancing right now?

MR. SLADE: Your Honor, I object. That's a speech, and it was already asked and answered by this witness.

THE COURT: Yeah. We've covered this, Mr. Hendershott.

UNIDENTIFIED SPEAKER: That's not an objection.

MR. HENDERSHOTT: I don't remember the answer. He just (indiscernible) that I would have to be done quickly. And I am questioning why he keeps making that statement. There's nothing that would have to instill a two-day liquidation with the assignment of a trustee.

MR. SLADE: (indiscernible).

THE COURT: Yeah. What he said, you know, a

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THE COURT: Okay, Mr. Loren.

CROSS-EXAMINATION OF MARK RENZI

BY MR. LOREN:

Q To the witness (indiscernible) rebalancing the portfolio, that a big selloff would (indiscernible) the market lower. Did you do any research on the VGX token?

THE COURT: What is it you want to know about the BTX did you say?

MR. LOREN: VGX token. I'm curious what analysis was done on that in regards to the rebalancing of the portfolio.

THE WITNESS: Could I just confirm that he said V as in Victor, G as in good, X as in x-ray? Is that correct?

MR. LOREN: Correct. VGX Voyager token.

THE WITNESS: Yes, we have done research on the VGX token. We have been careful to make sure that we have been opportunistic in selling some of the token in terms of the rebalance. The amount of holdings is relatively significant relative to the market cap for VGX with the company. And so, yes, the answer is yes.

MR. LOREN: What percentage of VGX is currently locked on the Voyager app?

THE WITNESS: Your Honor, I have a procedural question in terms of being discrete about rebalancing versus answering this question. Because I'm afraid that it will

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1 have an effect on the market. So, I'm --

2 MR. SLADE: Let me object to the relevance of  
3 (indiscernible).

4 THE COURT: I had trouble hearing the question.  
5 What was it exactly?

6 MR. LOREN: My question is what is the rough  
7 percentage of VGX on the Voyager app.

8 MR. SLADE: Yeah. I object, Your Honor. It's not  
9 relevant. I'm worried that he might be asking questions  
10 that (indiscernible) rather than get information that's  
11 relevant to this --

12 THE COURT: Okay. I will sustain the objection.

13 BY MR. LOREN:

14 Q So, this is exactly why I wanted to ask the question.  
15 Let's say roughly 80 percent of VGX is locked on the app. I  
16 would to know your price analysis of VGX when 80 percent of  
17 this token gets locked all at once on Binance.

18 MR. SLADE: Yeah. I have the same objection.

19 THE COURT: Yeah. Objection sustained.

20 BY MR. LOREN:

21 Q (indiscernible) the price of VGX would plummet to zero.  
22 How would you combat this?

23 A Your Honor, the whole idea of rebalancing is to do it  
24 in a way that is opportunistic and make sure that the  
25 trading is done in an appropriate manner and also consistent

1 have a plan. The plan does highlight a rebalancing  
2 transaction, and that rebalancing will eliminate the concern  
3 that you exactly have in my opinion.

4 Q So, that may help during the rebalancing portion. But  
5 once the tokens VGX has sent to Binance and users have  
6 access to their VGX tokens, 80 percent of supply being  
7 released at once is going to plummet the price. We were  
8 given a claim that (indiscernible) but we won't be able to  
9 actually get that (indiscernible) value from VGX  
10 (indiscernible). Reason being is, like I said, it would be  
11 a bloodbath. It would be a huge selloff even mention that  
12 if you do have a big selloff, the price will tank. So, what  
13 would be used to combat this selloff?

14 MR. SLADE: Your Honor, I object to the extent  
15 that was the question he just answered.

16 THE COURT: I don't think so. As I understand the  
17 question, the question is will VGX in the real world have  
18 the value that's being ascribed to it for distribution  
19 purposes.

20 THE WITNESS: Your Honor, I understand the  
21 question. I think the ultimate decision of each account  
22 holder is up to each account holder. So, each account holder  
23 decides as soon as they have access to VGX and they just  
24 want to sell it, yes, I suspect it will go down more than it  
25 would otherwise go down. However, I think that some of the

1 with the APA. And so, what we're trying to do is spread out  
2 trading at times that are opportunities so that we don't  
3 flood the market, as this gentleman is highlighting. And we  
4 are trying to do that in a way that is being transparent  
5 with the Unsecured Creditors' Committee and believe that our  
6 methodology is working thus far.

7 Q So, aside from the -- aside from rebalancing, I am  
8 referring to once the VGX token, which I believe that's  
9 roughly 80 percent of VGX currently locked on the app, then  
10 80 percent of supply is released to (indiscernible) Binance,  
11 what will happen to the price? One could easily determine  
12 there would be a bloodbath and the price would plummet to  
13 zero. How is that fair in regards to the recent 80 percent  
14 of the market (indiscernible) at once?

15 A We're rebalancing. We're not releasing all of the  
16 coins into the market. So, what's important is we're  
17 distributing -- let me -- just let me finish for a second.  
18 We are trying to rebalance to the right proportionality so  
19 we don't have to sell it all down and then we can provide it  
20 and return it in kind.

21 So, to the extent that we were under a scenario of a  
22 liquidation, I actually a hundred percent agree with you  
23 that it would be a very challenging situation in terms of  
24 recovery if you had to sell it all immediately or in very  
25 short order into cash. But we are not doing that because we

1 -- I think the customers are sophisticated. They understand  
2 that this would move markets significantly. And we'll take  
3 that into consideration before deciding all at once to sell  
4 down their assets and do it in a timely fashion. Just as,  
5 for example, if you have an unusual commodity, I think that  
6 you would look to try to address it in the market in the  
7 right way and not just sell it down immediately. So, there  
8 are scenarios that if everybody was coordinated and all  
9 agreed to sell at once, I think you're right. It would  
10 massively reduce the value of VGX in total. But that's a  
11 coordinated effort. And I don't see that happening  
12 initially, but it's possible.

13 BY MR. LOREN:

14 Q I do not believe that at all. 80 percent supply being  
15 released into the market in a single day. You know what  
16 will happen. People will sell. (indiscernible).

17 THE COURT: Mr. Loren, I'll have to tell you the  
18 same thing I've been telling other people. I know you're  
19 not an attorney, but cross-examination is for the purpose of  
20 asking questions, not stating your opinion, not arguing with  
21 the witness. For purposes of asking questions and eliciting  
22 evidence. Okay?

23 MR. LOREN: Thank you for that, Your Honor.

24 BY MR. LOREN:

25 Q My next question relates to Binance. During your

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1 research in due diligence, what would you find on how  
2 Binance is more credible than FTX. As we know, FTX is a  
3 fraudulent company. So, why is Binance more credible? What  
4 was your research?

5 A Binance is one of the largest exchanges in the U.S.  
6 They also try to hold one-for-one reserves on their  
7 exchange. They have a tremendous amount of volume and  
8 capacity on their exchange. And then lastly, one thing that  
9 I feel is confirmatory diligence that 97 percent of  
10 customers that have voted also believe that this transaction  
11 makes the most sense for them. So, besides our own  
12 diligence that has been done by Moelis and BRG and the  
13 company as well as by the unsecured creditors' advisors, we  
14 believe that this is a value-maximizing transaction with a  
15 company that is one of the largest players if not the  
16 largest player in the U.S.

17 And to the extent that we feel as if -- that there are  
18 issues that arise between now and closing, we have the  
19 option to move into a toggle plan.

20 Q You state that Binance have good recordkeeping. Can  
21 you tell us what research you completed in order to come to  
22 this conclusion?

23 A My team as well as the Moelis team had the opportunity  
24 to interview Binance and its management team as well as its  
25 advisors to go through a number of concerns that they had as

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1 And we continue to learn from the issues that FTX had. And  
2 that is part of the questions that we had are addressed by  
3 the meetings that we had even this week in terms of our  
4 diligence in regards to Binance. So, the diligence was more  
5 rigorous.

6 Q Okay. So, you believe that Binance (indiscernible)  
7 solvent company (indiscernible) analysis and research. What  
8 happens when we transfer our claims over and Binance goes  
9 kaput, they go bankrupt? What's the next step?

10 MR. SLADE: I'll object. It's a hypothetical  
11 question that assumes facts not in evidence.

12 THE COURT: Do you know the answer?

13 BY MR. LOREN:

14 A I think you're asking if to the extent that unforeseen  
15 circumstances occur and Binance goes bankrupt? Is that  
16 correct? Is that what you're asking of me?

17 Q That's correct. I am referring to claw backs, et  
18 cetera. What would happen with our claims is Binance goes  
19 under?

20 A I do not have full access to all the financials of  
21 Binance to answer your question completely. But you would  
22 be an unsecured creditor or a creditor of the Binance estate  
23 to the extent that there was a bankruptcy of Binance. But I  
24 don't know if you would be unsecured or secured depending on  
25 what you elect to do during the hypothetical period between

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1 well as the Unsecured Creditors' Committee advisors. And  
2 those diligence meetings did not deter having this hearing  
3 today with the current trajectory that we're on.

4 Q Great. Did you do the same meetings with FTX?

5 MR. SLADE: Your Honor, can I object? This  
6 inquiry is about the past. It's not relevant.

7 THE COURT: Overruled.

8 MR. LOREN: It's very relevant.

9 THE COURT: The objection was overruled. The  
10 witness can answer the question.

11 BY MR. LOREN:

12 A We did due diligence on FTX. As we all know, FTX is a  
13 fraud. They defrauded not only millions of customers, but  
14 also a number of regulatory bodies in the United States.  
15 They were vetted by the same constituents. We believe that  
16 we're fortunate that we did not get wrapped up in that  
17 transaction and we believe that this transaction with  
18 Binance is significantly better.

19 Q If you did the same due diligence with FTX in these  
20 meetings, why would we trust you and say that you are  
21 credible when you had the same meetings with Binance?  
22 What's the difference?

23 A We didn't do the same diligence. We did more diligence  
24 on Binance. And the reason being is that we are more  
25 informed about the issues about FTX. Every day we all are.

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1 when you become a customer and when that hypothetical  
2 bankruptcy could occur.

3 Q Okay. I'm curious if there's any way to get any claw  
4 back protection from Voyager funds being transferred to  
5 Binance if Binance goes under.

6 THE COURT: What was the question?

7 BY MR. LOREN:

8 Q Do we have any claw back protections if let's say we  
9 transfer the money from Voyager to Binance. Binance then  
10 goes bankrupt, and then (indiscernible) money from Binance.  
11 Would Binance be able to claw back our funds or can we have  
12 protection from Voyager-specific funds?

13 THE COURT: The modifications to the sale  
14 agreement that were made in January after I raised some of  
15 these very same issues and the order that I entered that  
16 approved the sale agreement are very clear that until such  
17 time as the distributions are made to the customers, Binance  
18 will hold anything that it holds strictly in trust. It will  
19 not be considered Binance's property.

20 Once a customer keeps items in its account -- and  
21 I think the customer is going to be in whatever boat other  
22 Binance customers are going to be in. But for purposes of  
23 the initial distributions, we I believe changed the terms of  
24 the deal to make it clear that nothing would get stuck. So,  
25 if you want your crypto and you withdraw it from Binance

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1 right after it's distributed to you, my understanding -- and  
 2 I'll ask the Debtors and the Binance people here to correct  
 3 me if that's wrong. But my understanding is that it would  
 4 never be considered property of Binance and that it would  
 5 have been distributed to you by Binance solely in its  
 6 capacity as a distribution agent and couldn't get stuck in a  
 7 Binance bankruptcy. Is that right?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: And is there -- did we set it up so  
 10 that there's a period of time within which customers can  
 11 make those withdrawals before we have any issues? I can't  
 12 recall.

13 MS. OKIKE: Your Honor, the way the plan -- sorry,  
 14 the transaction works is we will send crypt to Binance on a  
 15 weekly basis as customers sign off. That crypto has to be  
 16 put in the customer's account within five business days.  
 17 And upon that time, they can immediately withdraw  
 18 (indiscernible).

19 THE COURT: And did we put in the trust provisions  
 20 and the custody provisions that that custody arrangement  
 21 lasts up until a certain amount of time after items are put  
 22 into customer's accounts so that customers who want to take  
 23 it out right away will know that they're not at risk from  
 24 doing so?

25 MS. OKIKE: Sorry. I couldn't hear the last part,

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1 you want to put money or crypto to Binance (indiscernible) -  
 2 - this is Alah Shehadeh for the record, Your Honor.

3 THE COURT: Who is speaking?

4 MR. SHEHADEH: Any time you put money or crypto to  
 5 Binance --

6 THE COURT: Who is speaking now?

7 MR. SHEHADEH: Alah Shehadeh.

8 THE COURT: No, you've asked your questions. I'm  
 9 sorry. You've had your chance.

10 Is there anybody who hasn't already done so --

11 MR. SHEHADEH: I'm asking another question.

12 THE COURT: You --

13 MR. SHEHADEH: Your Honor, I wrote you a letter  
 14 about this. You have to allow me to speak. I want to ask a  
 15 question. I am a pro se creditor. I want to ask a  
 16 question.

17 THE COURT: You've asked --

18 MR. SHEHADEH: You were answering a question for a  
 19 witness and you were not allowing them to answer. You were  
 20 answering for them.

21 THE COURT: You've --

22 MR. SHEHADEH: I'm asking a simple question. How  
 23 is --

24 THE COURT: You've had -- Mr. Shehadeh, be quiet.

25 MR. SHEHADEH: (indiscernible).

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1 Your Honor.

2 THE COURT: I don't want there to be an argument  
 3 that the trust relationship or the custody relationship  
 4 ended the nanosecond that something hit an account and  
 5 before a customer actually meaningfully could withdraw it.  
 6 So, it seems to me that provision about custody and trust  
 7 needs to be in effect for some period of time after it's  
 8 nominally credited to a customer's account so that if there  
 9 is a customer out there who wants to take it out right away,  
 10 that customer can do it without being told that, contrary to  
 11 our expectations, they've been made potentially an unsecured  
 12 creditor of Binance.

13 MS. OKIKE: Understood, Your Honor. I don't  
 14 believe that we addressed timing with respect to that, but  
 15 we can of course discuss with Binance (indiscernible).

16 THE COURT: Okay.

17 MR. LOREN: That is all my questions. Thank you  
 18 for your time.

19 THE COURT: Thank you.

20 MR. LOREN: Thank you for your time.

21 THE COURT: Thank you. Is there anybody else on  
 22 the phone who wishes to question the witness?

23 MR. SHEHADEH: I would like to, Your Honor. I  
 24 just want to know why (indiscernible) open up the Voyager  
 25 app and release that crypt from there. Binance -- whenever

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1 THE COURT: Be quiet. Be quiet. Be quiet.

2 MR. SHEHADEH: Why are you (indiscernible) our  
 3 money?

4 THE COURT: Lorraine, cut him off.

5 MR. SHEHADEH: (indiscernible)

6 THE COURT: Cut him off.

7 MR. SHEHADEH: (indiscernible) steal our money.  
 8 We've got to pay a fee --

9 THE COURT: Lorraine, cut him off.

10 MR. SHEHADEH: -- to transfer our money out of  
 11 there.

12 THE COURT: Cut him off. You've lost your right  
 13 to participate. You're not listening. Cut him off.

14 MR. SHEHADEH: (indiscernible) questions. You're  
 15 answering the questions for the witness. You are not for  
 16 the creditor. You are helping yourself. None of you are.

17 THE COURT: Lorraine, cut him off.

18 MR. SHEHADEH: (indiscernible). It's a crime.  
 19 It's a crime. You guys are committing fraud.

20 THE COURT: We are going to adjourn until Mr.  
 21 Shehadeh is not only excluded, but barred from rejoining.  
 22 You have forfeited any right to participate in this  
 23 proceeding both by your contemptuous conduct and your  
 24 refusal to listen to ordinary court rules and the fact that  
 25 you continue to desire to treat this as a podium for you to

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scream about your grievances instead of to participate in the court hearing. You are barred from participating. We will resume when you are excluded.

(Recess)

THE COURT: All right. We will resume. I would like to let any other accountholders on the phone know it appears that Mr. Shehadeh, even after we cut him off, may have been speaking through somebody else's line. He is barred. If you let him speak through your line, you will be barred as well. And you are under my direct instruction not to allow him to speak indirectly through your line. Is that understood? Okay.

Now, is there anybody on the phone who hasn't already questioned the witness who would like to question the witness?

MR. JONES: Yes, Your Honor. Seth Jones.

THE COURT: Who is this?

MR. JONES: Seth Jones.

THE COURT: Seth Jones? Okay.

MR. JONES: I have a question. Earlier, the witness said that the toggle wasn't needed in the FTX deal. But contrary to that, UCC said that FTX wouldn't allow (indiscernible). So, which is it?

THE WITNESS: I couldn't hear the question.

THE COURT: I'm afraid I couldn't hear you clearly

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they weren't allowed to have it. So, I mean, which is it?

MR. SLADE: Your Honor, I object to the relevance of that.

THE COURT: Well, I am not sure what statement by the UCC are you referring to, Mr. Jones?

MR. JONES: UCC said that FTX, they wanted to have a toggle, a backup toggle. And FTX refused to allow them to have a toggle in the first APA of FTX.

MS. OKIKE: Your Honor, I'm happy to answer the question.

THE COURT: Yeah, go ahead, Ms. Okike.

MS. OKIKE: So, it is correct that we requested a toggle from the FTX plan, and FTX refused. And it was removed from (indiscernible).

MR. JONES: Thank you. I just wanted to clarify that.

THE COURT: Okay.

MR. JONES: Thank you.

CROSS-EXAMINATION OF MARK RENZI

BY MR. JONES:

Q Next question. (indiscernible) detailed investigation by Forbes has raised significant questions about the management and custody of customer assets at Binance. Can you address those concerns?

MR. SLADE: I object. It assumes facts not in

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enough. You said that the UCC earlier --

MR. JONES: The toggle. You said the toggle wasn't needed for the FTX deal, but the UCC said that FTX would allow them to add the toggle to the plan.

THE WITNESS: I understand.

THE COURT: Okay.

MR. JONES: So, which is it?

THE WITNESS: Sir, let me try to paraphrase your question. You're asking -- and just if you could tell me if I've got it right. You're asking if we had a toggle plan when there was the FTX initial bid. Is that correct?

MR. JONES: No, yeah. You said that -- earlier you said that the toggle wasn't needed in the FTX deal because FTX was a vibrant company. But the UCC in the court documents said that FTX wouldn't allow them to add the toggle to the plan.

THE WITNESS: I think at that point in time, we believed that the FTX deal was appropriate. We did not have a toggle; I think as you correctly stated. I think -- and what we've learned from that situation and the fraud that FTX has perpetrated upon you and all of us and many other citizens, we made sure that there's a toggle to address the fact that there wasn't a toggle.

MR. JONES: I understand. But UCC wanted the toggle. But the UCC said that they wanted the toggle, but

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evidence. I'm not sure what he's talking to.

THE COURT: Are you aware of the Forbes article about Binance and do you have any knowledge about any of the issues that are raised there?

THE WITNESS: I have not read the Forbes article.

BY MR. JONES:

Q (indiscernible) there's a lot of them that -- coming out just like with FTX raising significant concerns (indiscernible). I just wanted to -- the due diligence you did in the Binance deal (indiscernible) the FTX deal.

A Yeah. We've spent more time doing due diligence on Binance, including this week. We have met with the company and its advisors to make sure that a number of the questions have been addressed to the best of our ability. We've also been in coordination with the UCC advisors to make sure that all of their questions were addressed. They were also present in those meetings and we believe that we have a construct in hand and in place to address the fact that if the Binance deal does not work, we have a toggle plan. So, yes, we feel as if the diligence has been more robust, it's been ongoing. I believe that it occurred this week, earlier this week, on top of other days prior to this week. And we believe that it's been more robust than what it was with FTX.

Q You said that Binance holds a one-to-one ratio of

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1 coins, but you also said the same thing about FTX saying  
 2 that they held one-to-one assets in coins. So, how do we  
 3 know it was not (indiscernible) deal?  
 4 A I don't think I testified that FTX holds one-to-one.  
 5 Q I got confused with the (indiscernible). Sorry about  
 6 that.  
 7 A No problem. No problem.  
 8 Q All right. That's all my questions for now. Thank  
 9 you.  
 10 THE COURT: All right. Thank you. Anybody else  
 11 on the phone?  
 12 UNIDENTIFIED SPEAKER: Yes, Your Honor, I have a  
 13 few questions.  
 14 THE COURT: Who is this?  
 15 UNIDENTIFIED SPEAKER: This Andre (indiscernible),  
 16 pro se creditor.  
 17 THE COURT: Okay. Please proceed.  
 18 UNIDENTIFIED SPEAKER: So, can you -- Mr. Renzi,  
 19 can you tell me again once again what the estimated recovery  
 20 would be if the Binance deal does go through, the  
 21 percentage?  
 22 THE WITNESS: Excuse me. The estimated recovery  
 23 for the Binance deal I believe in my declaration is  
 24 approximately 50 percent as of the 12/18 prices that are  
 25 represented in my declaration. I know --

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1 THE WITNESS: Just once second. I'll turn to it.  
 2 UNIDENTIFIED SPEAKER: Okay.  
 3 THE WITNESS: So, again, my declaration -- I'll  
 4 just go left to right if that's okay, if it helps you. If I  
 5 look at accountholder claims and recovery under the Binance  
 6 plan, it's roughly 50 percent. Under the toggle plan it's  
 7 roughly 45 percent. In the high case scenario and in a  
 8 liquidation, it's 38 percent. In the low case scenario,  
 9 it's 35 percent. Hopefully, that answers your question.  
 10 UNIDENTIFIED SPEAKER: Okay. Thank you for that.  
 11 THE WITNESS: Hopefully, that answers your  
 12 question.  
 13 UNIDENTIFIED SPEAKER: Yeah, it does. And now  
 14 earlier you had mentioned an issue with unsupported coins.  
 15 If I understand right, why Voyager couldn't just distribute  
 16 whatever assets are remaining because of these unsupported  
 17 coins. What percentage of the total crypto assets are in  
 18 unsupported coins?  
 19 THE WITNESS: I believe I -- if you give me one  
 20 second, I have it also in my declaration. So, sir, on  
 21 Paragraph 120 -- I'll just read this to you in case we don't  
 22 have it. There are technical limitations that would prevent  
 23 the Debtors from making in-kind distributions on certain  
 24 types of cryptocurrency on the Debtor's platform. There are  
 25 35 cryptocurrency tokens for approximately 17 percent of the

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1 UNIDENTIFIED SPEAKER: Okay. And if the deal  
 2 doesn't go through?  
 3 THE WITNESS: I also know that the prices have  
 4 appreciated in your favor and that the recovery levels are  
 5 in the 70 percent range. I've been on the stand most of the  
 6 day, so I am not sure what's happening in the markets, but I  
 7 think it's roughly in the 70 percent range now.  
 8 UNIDENTIFIED SPEAKER: Okay. So, in December --  
 9 as of December 18th, it was roughly 50 percent. But you're  
 10 saying as of today it's potentially roughly 70 percent?  
 11 THE WITNESS: In the seventies, that's correct.  
 12 UNIDENTIFIED SPEAKER: Is that correct?  
 13 THE WITNESS: Yes.  
 14 UNIDENTIFIED SPEAKER: Okay. And if the deal  
 15 doesn't go through, what would the recovery percentage be?  
 16 Or is it the same?  
 17 THE WITNESS: So, I can -- so I can -- I'm happy  
 18 to do it, I would like to grab my declaration just so I can  
 19 remind myself of my chart if you would give me a second.  
 20 THE COURT: You have to clarify the question. Are  
 21 you asking what would happen if we did the toggle plan  
 22 instead of the Binance deal, or are you asking what would  
 23 happen if we had no plan and went to Chapter 7?  
 24 UNIDENTIFIED SPEAKER: No, if we went to the  
 25 toggle plan, what would the recovery percentage be. Yeah.

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1 debtor's cryptocurrency portfolio based on equivalent USD  
 2 value. Hopefully, that answers it. That is Paragraph 120.  
 3 BY UNIDENTIFIED SPEAKER:  
 4 Q I'm sorry, so that's 70 percent of the (indiscernible)  
 5 on these unsupported coins?  
 6 A No, you probably misheard me. It's 17, one, seven.  
 7 Seventeen.  
 8 Q Seventeen.  
 9 A Yes.  
 10 Q Seventeen percent. Okay. Okay. So, roughly 83  
 11 percent --  
 12 A Yeah. Let me just do the numbers one more time to be  
 13 helpful. So, it's 35 coins. And the USD representation of  
 14 that is 17 percent overall. So, it's obviously -- those  
 15 coins are of lower overall value, but it's still 17 percent,  
 16 which is meaningful. That's Paragraph 120 if you're looking  
 17 for it.  
 18 Q Right. Roughly -- let's just say \$200 million out of  
 19 the \$1.3 billion, right?  
 20 A Mm-hmm.  
 21 Q Okay. The majority of crypto assets could be returned  
 22 to the Voyager platforms if need be.  
 23 A Yes. And I think that's right. And that's certainly a  
 24 majority, especially if you do the math if there's -- let's  
 25 just keep it simple. If there's a hundred coins, it's 65 --

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1 you know, 65 percent. Or if you do it on a dollar-weighted  
2 basis, you're right, it's 83 percent as of the time that  
3 this analysis was done, which was around 12/18. That  
4 proportionately should be roughly the same. So, you're  
5 absolutely right. They can do most of it on a proportionate  
6 basis or on a dollar proportion basis also.

7 Q Okay, great. Great. And if I understand right  
8 (indiscernible) with the Binance deal, the assets would be  
9 basically placed in a trust, in some kind of trust. And  
10 Binance would just essentially be the distribution medium  
11 for us to get our funds back. Is that correct?

12 A I think you said that well.

13 Q Okay. Okay. So, is there really any risk then -- I  
14 mean, what -- maybe I'm not thinking about this correctly,  
15 but what is the risk then of going to Binance if our assets  
16 will be held in trust and they're just going to just be the  
17 distribution medium. Is it really just post...

18 A Yeah. You were hearing from my testimony that we  
19 acknowledge that some have different views of risk than  
20 others. That's the first premise. The second premise is  
21 that we try to take into consideration some due diligence  
22 and make sure that we understood the bid, we think that  
23 Binance is the highest and best value, and that to the  
24 extent that we feel uncomfortable with that transaction in  
25 any way, we have a toggle. But to your question

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1 know that members of my team were on site with their  
2 advisors and some of the company members. And I believe  
3 that they've gone through a number of books and records to  
4 make sure that we're comfortable.

5 And furthermore, because there's checks and balance,  
6 the unsecured creditors' committee advisors also were preset  
7 at that meeting. So, it's not just the Debtor's advisors,  
8 but it's also your representatives were also in the room,  
9 too.

10 Q Okay. That doesn't hold much value anyway. Okay.  
11 That is all my questions. Thank you.

12 A Thank you.

13 THE COURT: Okay. Is there anybody else on the  
14 telephone who wishes to cross-examine the witness? All  
15 right. Committee counsel?

16 MR. KIRPALANI: Yes, Your Honor. Thank you.

17 CROSS-EXAMINATION OF MARK RENZI

18 BY MR. KIRPALANI:

19 Q Mr. Renzi, good afternoon. So, you testified that you  
20 conducted diligence on Binance, correct?

21 A Yes, my team has.

22 Q And in connection with that diligence, Binance made a  
23 number of representations to you and others?

24 A Yes, they ha.

25 Q And do you recall the question from one of the

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1 specifically, I think you may have a different risk  
2 tolerance than others obviously based on my testimony today  
3 and questions today. Others perhaps don't see it the same  
4 way you do. But nonetheless, we think the way -- the  
5 construct and process that we've laid out could get  
6 cryptocurrency back in kind. We think it is very well  
7 thought out, and we have a toggle plan if the Binance plan  
8 doesn't work. Hopefully, I answer your question.

9 Q Yeah. And just to be clear, I'm definitely not in  
10 support or not in support. I'm just trying to understand  
11 what the actual risk is, where is my risk by going to the  
12 Binance deal. And from what I'm seeing, if all our assets  
13 are being (indiscernible) in a trust okay, which will not be  
14 Binance property and, you know, we'll have a period of time,  
15 as the Judge was saying earlier, there's not going to be an  
16 a-ha after they transfer our funds to the Binance  
17 (indiscernible), well, now it's ours or now, you know,  
18 whatever. So, if there's no risk of that and they're just a  
19 distribution mechanism, then really -- again I might be  
20 seeing this wrong. Maybe the risk is contained, I guess. I  
21 might have just answered my own question. No problem.

22 One last question. In your due diligence with Binance,  
23 have you seen their books? Has anyone really dug into their  
24 books?

25 A We've reviewed numerous documents with the company. I

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1 questions about the comingling of cryptocurrency?

2 A I did.

3 Q And didn't Binance represent to you and other  
4 professionals that Binance U.S. segregates customer crypto  
5 from Binance U.S.'s cryptocurrency?

6 A I believe so. I checked my notes. I believe that's  
7 right.

8 Q Okay. There were a series of questions about the  
9 relationship between Binance U.S. and Binance Global. Do  
10 you recall that?

11 A I do.

12 Q The purchasing entity here is BAM Trading Services  
13 Inc., DBA Binance U.S. Isn't that right?

14 A Yes.

15 Q And they are a Delaware corporation?

16 A I believe they're a Delaware corporation.

17 Q And in connection with the diligence that you did and  
18 the other professionals, did you look into the financial  
19 capabilities of BAM Trading Services Inc., DBA Binance U.S.?

20 A We reviewed numerous documents about their books and  
21 records.

22 Q Based on the diligence of BAM Trading Service Inc., DBA  
23 Binance U.S. on their finances, are you comfortable that  
24 they have the financial wherewithal to close?

25 A As of today, yes.

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1 Q Another representation made to you by Binance was that  
 2 only employees of Binance U.S., not Binance Global, are able  
 3 to move or withdraw customer cryptocurrency over Binance  
 4 U.S.'s platform? Isn't that right?  
 5 A I believe it's only Binance U.S. employees.  
 6 Q Okay.  
 7 A Correct.  
 8 Q There was a question asked to you about the difference  
 9 between how Binance U.S. holds customer crypto versus how  
 10 Voyager held customer crypto. Do you remember that?  
 11 A I do.  
 12 Q Another representation made to you was that Binance  
 13 U.S. does not lend or rehypothecate customer crypto. Do you  
 14 remember that?  
 15 A I do.  
 16 Q There were some comparisons being drawn between the  
 17 deal with FTX and the deal with Binance. Do you recall  
 18 those questions?  
 19 A There were many.  
 20 Q One of the protections that was put in place in the  
 21 Binance deal is that customer crypto go through Binance over  
 22 time. Is that right?  
 23 A Yes. Over -- in succession and over weeks.  
 24 Q In succession. And so, customer crypto will only go to  
 25 Binance U.S. once that customer has (indiscernible) with

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1 A Yes.  
 2 Q Based on the diligence that you've done to date, are  
 3 you still supportive of the Binance deal?  
 4 A Yes, I am.  
 5 MR. KIRPALANI: I pass the witness, Your Honor.  
 6 THE COURT: All right. Any redirect by the  
 7 Debtors?  
 8 MR. SLADE: No, Your Honor.  
 9 THE COURT: Okay. Just briefly, Mr. Renzi, you  
 10 just said that you -- that Binance represented that it  
 11 doesn't lend or rehypothecate. Maybe I misheard you, but I  
 12 thought you said earlier in your testimony that they do  
 13 rehypothecate?  
 14 THE WITNESS: Yes, Your Honor. I think I was  
 15 mistaken. I went back and checked my notes. They do not  
 16 rehypothecate. They hold it one for one. I think that's a  
 17 correction.  
 18 THE COURT: Okay. Now, in some of the objections,  
 19 there have been questions about specific matters. One was  
 20 whether you have any knowledge of safeguards that exist to  
 21 stop assets from being transferred off the Binance U.S.  
 22 platform, I assume at the direction of the parent or  
 23 somebody else. What safeguards are in place to prevent that  
 24 from happening to your knowledge?  
 25 THE WITNESS: Your Honor, do you mean Binance

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1 Binance U.S. Isn't that right?  
 2 A That's my understanding.  
 3 Q And that limits the time period that customer crypto  
 4 will be on Binance U.S. if they choose to get  
 5 (indiscernible). Isn't that right?  
 6 A Yes.  
 7 Q So, what protections does that give? Why is that more  
 8 protectorate of customer crypto than the FTX deal?  
 9 A Well, the FTX deal is going to be transferred quickly  
 10 and in bulk. This is over time and more protective, make  
 11 sure that it's done ratably and slowly to determine if there  
 12 are any problems as we are doing it. So, I think it's much  
 13 more conservative than the way we are approaching it.  
 14 Q So, to put it plainly, all the crypto doesn't go to  
 15 Binance U.S. right away, right?  
 16 A Correct.  
 17 Q It goes on a weekly basis and only for those customers  
 18 that have onboarded with Binance U.S., right?  
 19 A Correct.  
 20 Q So, if something were to happen with Binance U.S., it's  
 21 only the customer crypto that went over (indiscernible),  
 22 isn't that right?  
 23 A That's right.  
 24 Q You submitted a declaration in support of the plan  
 25 which includes this Binance deal?

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1 itself or just from the customer perspective? Which  
 2 perspective? Sorry.  
 3 THE COURT: Well, I know you said that they  
 4 represented to you that only the U.S. employees have access  
 5 to the keys. What procedures are safeguards are in place to  
 6 prevent the parent from telling the U.S. employees to just  
 7 transfer things off to the parent?  
 8 THE WITNESS: I believe they are separate legal  
 9 entities with separate management teams that they  
 10 specifically hold them differently. I can't anticipate if  
 11 there's malfeasance. But to my understanding, they will try  
 12 to do everything they can to protect it. But I can't  
 13 survive how far an entity might redirect a U.S. entity.  
 14 THE COURT: Is that a possibility you discussed  
 15 with them or did you get any assurances from them on that  
 16 point?  
 17 THE WITNESS: Other than what I've already  
 18 represented, they said that they wouldn't. But I don't know  
 19 any other procedures that they have in place to do that.  
 20 THE COURT: This might be more of a question for  
 21 Mr. Tichenor. But in his declaration, he says as part of  
 22 the due diligence that in response to news reports about the  
 23 transfers of \$400 million to Merit Peak Limited, that the  
 24 Debtors have done supplemental due diligence. And it was a  
 25 little vague about what questions were asked and what the

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1 answers were and whether that loop has really been closed or  
2 whether it's still a point of discussion. Do you have any  
3 knowledge of that?

4 THE WITNESS: I would defer to Mr. Tichenor on  
5 that subject, Your Honor.

6 THE COURT: I'm sure he appreciates that.

7 THE WITNESS: I spent quite a lot of time with you  
8 this afternoon, Your Honor.

9 THE COURT: Okay. Let's (indiscernible) next.  
10 All right. Thank you very much. You are excused.

11 All right. It is 4:30. Do you want to begin with  
12 another witness or continue tomorrow?

13 MR. SLADE: We would like to try to finish. I  
14 think our next witness, Mr. Kirpalani (indiscernible).

15 MR. KIRPALANI: Good afternoon, Your Honor.  
16 Susheel Kirpalani for Quinn Emanuel on behalf of the  
17 Debtors. And more specifically speaking through the special  
18 committee of independent directors of Voyager Digital LLC.

19 The next witness that we'd like to call is Mr.  
20 Timothy Pohl, who is one of the two independent directors of  
21 Voyager Digital LLC. Mr. Pohl, who doesn't live in New  
22 York, just has some restrictions on his availability  
23 tomorrow. And so, we would like to attempt to get his  
24 testimony done today if that's at all possible.

25 THE COURT: We can try, but my guess is we're not

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1 THE COURT: Mr. Pohl, do you swear that the  
2 testimony you are about to give will be the truth, the whole  
3 truth, and nothing but the truth, so help you God?

4 MR. POHL: I do.

5 THE COURT: State your full name for the record,  
6 please.

7 MR. POHL: Timothy Pohl.

8 THE COURT: All right. Counsel, please proceed.

9 MR. KIRPALANI: Thank you, Your Honor. Your  
10 Honor, we filed -- it's Exhibit 3 for the trial record  
11 today, the Declaration of Timothy Pohl, as his direct  
12 testimony. It's Docket Number 1111. I understand the prior  
13 declaration received objections as to being admitted as  
14 direct. We would like to ask for this witness that his  
15 declaration be deemed admitted for his direct. He is  
16 available for cross-examination. And in particular, I would  
17 like to point out that much of his direct testimony relates  
18 to the special committee's independent investigation and  
19 report which has been on the docket since February 14th,  
20 2023 for all parties in interest to review. And to my  
21 knowledge, no specific objections at confirmation related to  
22 any of the particular findings therein. But he is here and  
23 available to answer cross-examination. But I will proceed  
24 any way Your Honor thinks appropriate.

25 THE COURT: On the first stance, are there any

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1 going to be able to. I mean, he's testifying about the  
2 releases, right?

3 MR. KIRPALANI: The estate releases, yes.

4 THE COURT: Yeah. I suspect based on how many  
5 questions we had on Mr. Renzi's issues, that we're probably  
6 going to have a lot on Mr. Pohl's issues, too.

7 MR. KIRPALANI: Can I confer with co-counsel?

8 THE COURT: Sure.

9 MR. KIRPALANI: Thank you.

10 MR. SLADE: Your Honor, just briefly, if we were  
11 to continue, how long would Your Honor be prepared to go  
12 today?

13 THE COURT: I haven't asked the court staff how  
14 long they are set up to go. I mean, it's usually not an  
15 issue for me. I don't know if you have any issue. You're  
16 okay? Certainly, we could go -- you're all right, Danny?  
17 Certainly, we can go to 6:00 or a little later. I mean, I  
18 don't have any personal issue.

19 MR. KIRPALANI: Yeah, we'd like to plow ahead,  
20 Your Honor, if possible.

21 THE COURT: Okay. Let's do what we can do.

22 MR. KIRPALANI: Thank you, Your Honor. Again, for  
23 the record, Susheel Kirpalani of Quinn Emanuel on behalf of  
24 the Debtors. We would like to call Timothy Pohl to the  
25 witness stand.

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1 objections to the admission of Mr. Pohl's declaration into  
2 evidence? All right.

3 Anybody who desires it will have an opportunity to  
4 cross-examine him. But there are no objections, so his  
5 declaration is admitted into evidence.

6 MR. KIRPALANI: Thank you, Your Honor.

7 DIRECT EXAMINATION OF TIMOTHY POHL

8 BY MR. KIRPALANI:

9 Q Mr. Pohl, I will just ask you briefly. Have you had a  
10 chance to review your declaration since it was filed two  
11 days ago?

12 A I have.

13 Q Do you have any changes that you would make to the  
14 declaration?

15 A No.

16 Q Okay.

17 MR. KIRPALANI: We have nothing further on direct,  
18 Your Honor.

19 THE COURT: All right. Is there anybody in the  
20 courtroom who wishes to cross-examine Mr. Pohl?

21 Hang on a second. I'll get to the telephone  
22 people in a minute. I just want to start with the people  
23 who are here in the courtroom. Is there anybody here in the  
24 courtroom who wishes to cross-examine Mr. Pohl? Okay. How  
25 about on the telephone? Is there anybody on the telephone

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that wishes to ask questions of Mr. Pohl?

MR. HENDERSHOTT: Your Honor, this is Tracy Hendershott, pro se creditor. Again, Your Honor, I haven't even seen this submission, so hard to ask questions. Can we get a summary of it from him verbally? Is that possible?

THE COURT: Sure.

MR. KIRPALANI: Absolutely, Mr. Hendershott. This is Susheel Kirpalani from Quinn Emanuel. And we will definitely give a summary of his testimony and then we can pass the witness to the extent you've got questions.

MR. HENDERSHOTT: (Indiscernible) --

BY MR. KIRPALANI:

Q Very briefly, Mr. Pohl, can you describe your background and experience for the Court?

A Sure. I've been in restructuring business for a little over 30 years. I started as an attorney at Jones Day where I had been an associate for about seven years and then became a lawyer at Skadden Arps in 1999 where I stayed until 2008. By the time I left, I was the co-head of Skadden's worldwide restructuring practice. In 2008, I left to become a managing partner at Lazard Freres where I was an investment banker in restructuring for the next decade. I retired from Lazard in the summer of -- or the fall of 2019. And I have been doing a variety of things ever since, including sitting on some boards of distressed companies as

Q Are there any other members of the special committee at Voyager Digital LLC?

A Yes. Ms. Jill Frizzley is the other (indiscernible).

Q Did you know Ms. Frizzley before serving on the board with her?

A I do of her. She was an attorney for I want to say around 20 years. I know by the end I think at Weil Gotshal. Or maybe the whole time. I'm not sure. I'm not I've had -- I've cross paths with her from time to time, but I didn't know (indiscernible).

Q Did you ever serve on a board with her before?

A No.

Q In your review, how did the board function? Well, poorly, acrimony, consensus?

A Well, I mean, the two of us were the two independent directors at Voyager LLC. You know, we were there for a particular purpose, which was to conduct this investigation. We hired counsel and we moved on from there.

Q Okay. And what did you consider the primary role for the special committee?

A Our primary role was to investigate historical transactions, really mostly about the -- the real impetus for the special committee I think was to look into the lending practices around the (indiscernible) capital loans that the company made. But as part of that, we looked at

an independent director.

Q Thinking about boards of distressed companies that you've sat on, are any of those companies, companies that Kirkland & Ellis has been counsel to?

A Voyager is the only company I have been asked by Kirkland and nominated by Kirkland to be a director on. I was asked in one other instance to be a director by creditors. Kirkland represented the company.

Q Okay. And what about my firm, Quinn Emanuel? Have we represented you as an independent director in any other engagements?

A (Indiscernible).

Q Do you have any connections with any potential party that you've been investigating in the course of your duties as a member of the independent special committee here?

A No.

Q How did you come to serve on the board of Voyager Digital LLC and can you tell us when that happened?

A I think right before the July 4th (indiscernible) called me and asked me if I would be interested in being an independent director, and specifically being on the special committee that was going to be charged with conducting an internal investigation (indiscernible) conducting. I said that I would. (Indiscernible) that's the only time I have been asked by Kirkland to be on a board (indiscernible).

(indiscernible) transactions and regulatory issues, we looked at the company's lending practices, the company's risk management practices. We sort of looked at everything to determine (indiscernible) with the assistance of counsel of course to whether or not there were any viable causes of action owned by the estate.

We specifically did not look at and were not charged with looking at individual causes of action, customer causes of action, regulatory causes of action, but estate-only causes of action arising out of historical transactions and practices.

Q Did the special committee consult with the statutory unsecured creditors' committed in the course of its work?

A We did extensively. One of the first things that we determined, particularly in light of the nature of the company's balance sheet with the creditors were and there was a creditor's committee, and that they were going to conduct their own investigation as it were. There was no reason not to be completely cooperative and hand-in-glove with them in that exercise, and that's what we set out to do.

Q And you said there was no reason not to be cooperative with them. Was there a reason to be cooperative with them in your view?

A Yeah. They're the primary fiduciary constituent

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1 representing really the only real creditor class in this  
2 case.

3 Q So, did you consider their views important to you?

4 A Very important.

5 Q What did the special committee do in terms of an  
6 investigation? You hear that word investigation, what does  
7 it actually mean?

8 A So, the first thing you do of course is hire counsel.  
9 And we hired you. And we then set out to -- I just call it  
10 discovery phase where we talked about the types of  
11 information that we would like to review and to have you  
12 review from the Debtor. And so, there were a series of --  
13 I'm doing this from memory, but 25 or 30 separate  
14 information requests that were (indiscernible) over the  
15 course of the investigation asking for documents. There  
16 were phone conversations and then there were a series of  
17 interviews that were conducted. I think there were 12  
18 separate interviews that people conducted of company  
19 officers and employees. And that was how we conducted the  
20 investigation.

21 Q And did the special committee have any financial  
22 advisor available to it?

23 A We didn't hire our own, but we were -- we had complete  
24 access to BRG and Mr. Renzi and his whole team. And we in  
25 fact availed ourselves of that and we had information

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1 conclusion of the special committee as to whether the estate  
2 had any causes of action against insiders of Voyager?

3 A Our ultimate conclusion was that there may be  
4 cognizable claims for breaches of fiduciary duty to care  
5 against two of the company's senior officers, Mr. Ehrlich  
6 and Mr. Psaropoulos.

7 Q And what did the special committee do with those  
8 findings or with that conclusion?

9 A Well, we did a number of things. So, first of all, I  
10 think our conclusion was that there may be cognizable causes  
11 of action, non-frivolous causes of action. That's not the  
12 same thing as concluding that there would be -- that they  
13 were wonderful causes of action or slam-dunk winning causes  
14 of action, but cognizable causes of action that -- number  
15 one. Number two, we concluded that they would be pretty  
16 hard to prosecute successfully, which we talk about. And  
17 three, we spent some time determining whether or not those  
18 two individuals had the financial wherewithal to pay  
19 significant judgement. And then number four, we were sort  
20 of very cognizant of the fact that this director and officer  
21 liability insurance that remains intact and is staying and  
22 could be available to satisfy potential judgements or  
23 (indiscernible).

24 So, with all of those things in mind, we thought that  
25 the best course of action and judgement was to see if we

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1 sessions, Ms. Frizzley and myself with you, in order to  
2 understand things better things that we didn't understand.  
3 I think (indiscernible) at the beginning of the case we were  
4 crypto neophytes. So, we had a lot to learn. So, we  
5 availed ourselves as that. And I (indiscernible) as well  
6 separate and apart from Ms. Frizzley and myself. We  
7 certainly had access to Kirkland & Ellis (indiscernible) any  
8 conversations as part of the investigation.

9 Q Did the special committee's investigation culminate in  
10 any written report?

11 A There was a written report. So, the investigation  
12 lasted approximately two months. I think it was July and  
13 August. A little longer than two months. And in early fall  
14 your firm prepared a draft. We reviewed it, we discussed  
15 it, and I think the culmination of that work was a -- I want  
16 to say about a 60-page, single spaced report that was  
17 finalized I think it was in early October if I remember  
18 right. That was the report.

19 Q And just so that we have it in the record, to your  
20 knowledge was that report filed publicly on the docket in a  
21 redacted form?

22 A It was. Not at that time, but it was filed I think in  
23 redacted form I want to say in February. Does that sound  
24 right?

25 Q Docket Number 1000, yes. And what was the ultimate

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1 could put together a settlement that would include  
2 protecting the D&O policy for the benefit of the creditors  
3 to the best of our ability as well as to obtain some  
4 monetary judgement from the monetary contribution from those  
5 two potential parties. Keeping in mind, you know, what  
6 their financial wherewithal was.

7 Q You said a lot there. But rather than me home in on  
8 each element of your testimony, perhaps I can ask you to  
9 just summarize the terms of the settlement reached with Mr.  
10 Ehrlich and Mr. Psaropoulos. And if you need to refer to  
11 your declaration, it is in evidence. You can do that. And  
12 then perhaps we can pass the witness in the interest of  
13 time.

14 THE COURT: Let me just ask. Somebody on the  
15 telephone, we've got some noise coming over your line.  
16 Please mute yourselves unless you are asking questions or  
17 unless you have an evidentiary objection to a question.  
18 Okay? Thanks.

19 BY MR. KIRPALANI:

20 A Let me do the easy parts first (indiscernible) there's  
21 some more complicated legal parts which I might refer to my  
22 declaration to make sure I say it right. But in essence,  
23 the settlement -- let's do them one at a time.

24 With respect to Mr. Ehrlich, the settlement is for him  
25 to pay to the estate -- he had received a bonus prior to

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1 filing the bankruptcy (indiscernible) the filing of the  
2 bankruptcy. He receive a bonus in the ordinary course of  
3 business in our view of about \$1.9 million. And he paid  
4 taxes on that. So, his net bonus net of taxes was  
5 approximately \$1.12 or \$1.13 million. And we as part of our  
6 settlement negotiated for him to return those funds, all of  
7 them, to the estate, as well as to have the ability to, if  
8 it's available, if there is a tax refund that is applicable  
9 to the unwinding of that bonus, if you will, then the estate  
10 would get the benefit of that as well.

11 That amount of money was a pretty significant amount of  
12 money relative to what his ability to pay. But that's what  
13 we got from him as part of the settlement.

14 Q And let me just interrupt you there. You said it was a  
15 pretty significant part relative to his ability to pay. How  
16 do you know what his ability to pay was?

17 A So, before we were willing to consider what settlement  
18 we would be willing to support, we asked -- we required that  
19 there be disclosure of his personal financial assets and  
20 liabilities and we required that those be provided under  
21 oath, if you will. There was both a -- I don't think it was  
22 an affidavit, but there was a sworn statement. And then he  
23 was deposed.

24 Q Thank you. And were there any other elements to the  
25 Ehrlich settlement before we move on?

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1 A To me it's easier to think about it that way. And then  
2 with respect to Mr. Psaropoulos, where I think we thought  
3 that the relative strength of the claims were different and  
4 not exactly the same -- still not frivolous. We had a  
5 similar approach. We insisted on gaining information under  
6 oath and through depositions about his personal financial  
7 situation. And the settlement with him is that he is -- has  
8 some crypto on the exchange. Right? So, he is essentially  
9 subordinating 50 percent of his rights to receive whatever  
10 he would receive under the plan as -- that's how he is  
11 contributing financially. That value of that is  
12 approximately -- I think the last time we calculated fell at  
13 \$60,000. And then he is also waiving his rights to  
14 indemnification (indiscernible). And then there is for both  
15 of them the more complicated piece with respect to the  
16 (indiscernible) insurance policy.

17 Q Okay. You mentioned that the estate was not actually  
18 releasing the claims against them, but just agreeing not to  
19 seek recourse against their personal assets beyond what they  
20 were contributing. Did I get that correct?

21 A You did.

22 Q What about customers who have claims against the Debtor  
23 or claims that they believe they have against individuals?  
24 Are those being released under the settlement that we  
25 reached with them?

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1 A Yes. A couple. And now it gets a little harder to  
2 describe (indiscernible). So, (indiscernible)  
3 subordinating. He has rights to indemnification for the  
4 company if he is sued -- I just want to back up for a  
5 second. The estate's claims against those two individuals  
6 are not being released. So, part of the settlement was that  
7 those claims are not released so that the claims against  
8 them can continue to be prosecuted. And to the extent that  
9 there's a judgment or a settlement, the estate can look to  
10 the D&O coverage with respect to (indiscernible).

11 On top of -- but as a result of monetary payment, there  
12 is no more recourse against his personal assets. And the  
13 reason I said it that way is because he has the right to be  
14 (indiscernible) for both and (indiscernible) and he also has  
15 the right (indiscernible). And he also has the right to be  
16 indemnified for defense costs, which (indiscernible).

17 So, with respect to the settlement indemnification  
18 rights, he has waived his rights essentially to receive  
19 indemnification from the estate.

20 The next thing if we're going to do it person-by-  
21 person, there's a little bit of complexity around the  
22 insurance policies. So, I think it's probably easier just  
23 to go and stay with the monetary pieces between the two  
24 people and then talk about the insurance.

25 Q Sure.

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1 A They're not being released. So, the only releases  
2 (indiscernible) that are being released under the plan are  
3 (indiscernible). The only releases with respect to them are  
4 releases of estate causes of action. So, individual  
5 customers who believe that they have claims against either  
6 of them or any other officer and director, those claims are  
7 not being released. Same with (indiscernible). They're not  
8 released.

9 Q Do you recall there was a time in the internal  
10 investigation when you became aware of an insurance policy  
11 that was obtained by the debtors shortly before the filing?

12 A Yes.

13 Q And what was your reaction to learning that  
14 information?

15 A Here's what we learned. So, the company had a policy  
16 or a number of policies that essentially amounted to  
17 (indiscernible). Shortly before (indiscernible) filing,  
18 getting ready for the filing, the company procured a second  
19 policy as part of a larger improvement in their overall D&O  
20 insurance situation. So, what we came to learn was that the  
21 company paid -- I think it was around \$15 million for a  
22 basket of goodies. One of those goodies, but not the only  
23 goody, was another \$10 million called the (indiscernible)  
24 policy, another \$10 million of D&O coverage. So, ten plus  
25 ten is 20. That wasn't the only thing that the company

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1 obtained in exchange for that.

2 Q Do you recall what else the company obtained?

3 A I do. The company also obtained six-year tail coverage

4 under both policies. So, the original \$10 million policy

5 and (indiscernible) purchased and I think, though I'm not a

6 hundred percent sure, but I don't think they had the

7 contractual right -- they had to negotiate with the

8 insurance carrier to obtain six years of tail coverage under

9 both policies, and there was money associated obtaining that

10 benefit.

11 And then the other was the original policy was as I

12 understand it excluded coverage for customer and regulatory

13 claims. Those exclusions were removed from both the

14 original policies and they did not apply to the new policy.

15 And so, those were all the things that happened at once for

16 a sum of fifteen-point-something-million dollars.

17 Q Despite that, it sounds like from your testimony there

18 was a basket, to use your phrase, of goodies, meaning

19 benefits to the debtor. Is that what you mean when you say

20 that?

21 A Yes.

22 Q Okay. Despite that, did you have a reaction given your

23 experience as a restructuring professional as to whether the

24 transfers to the insurance company on the eve of filing

25 might be avoidable for the benefit of the estate?

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1 A I do.

2 Q Why do you think that it is?

3 A Well, we conducted a pretty thorough investigation. We

4 looked at the company's risk management practices around --

5 particularly around (indiscernible). We concluded that

6 there were risk management practices in place. They were

7 not perfect. They were a work in progress at that phase and

8 time. But there was some level of diligence done. There

9 were decisions made for reasons that made sense. There was

10 an absence, a notable absence of any indicia of self-

11 dealing, improper motives. There was nothing in it for

12 these executives other than their genuine belief that making

13 those loans was good for the company. They were investors.

14 They had currency on the platform. Didn't find any of the

15 red flags that you sometimes find in other types of

16 situations. And so, whether or not there were breach of

17 duty of care claims based on criticism of the depth and the

18 detail around the risk management practices and how they

19 went into business with (indiscernible). We thought there

20 were some good facts and there were some bad facts. And

21 under the law as I remember it and as I have certainly been

22 reeducated by counsel, really you would have to find for

23 there to be a breach in duty of care. That's a gross

24 negligence standard. You would have to find that they were

25 grossly negligent (indiscernible), grossly negligent in

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1 A I think one of the things that stuck out to us was that

2 it appeared that despite the way I just described it, it

3 appeared in the paperwork as it was reported to us that the

4 \$10 million new (indiscernible) policy cost the company \$10

5 million. Whether that's the (indiscernible) described or

6 not, (indiscernible) of the greater sum that was paid for

7 the basket of goodies in some sense I think the insurance

8 company (indiscernible) sort of the thought behind it is \$10

9 million of new coverage for \$10 million. I don't know

10 whether that's accurate or not. But when we observed that,

11 our reaction to that was, huh, that seems unusual and

12 (indiscernible) there could be a fraudulent conveyance claim

13 against the insurance company for whether or not they

14 provided the estate with (indiscernible) in exchange for the

15 \$10 million that they received.

16 Q Did you do anything with that thought, that it may be

17 an avoidable transaction?

18 A We did. As part of the overall settlement, we

19 preserved that cause of action, did not release

20 (indiscernible) and that cause of action, along with the

21 causes of action against the two individuals, are being

22 transferred to (indiscernible).

23 Q Okay. Do you have a view as to whether the settlement

24 reached with Mr. Ehrlich and Mr. Psaropoulos is in the best

25 interest of the estate?

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1 probably going about doing the things that I just talked

2 about and making decisions (indiscernible).

3 And while we thought that there were colorable claims,

4 we thought that there were also pretty colorable

5 counterpoints. So, when we coupled that with the fact that

6 you can't get water from a stone. If you see somebody

7 (indiscernible) anybody can sue anybody for anything. They

8 not only might not win, but they're not going to have

9 anything to give you if you do win. And we looked at their

10 financial assets, and we thought that (indiscernible) in our

11 business judgment and in the best interest of the estate

12 would be negotiate the best deal that we could from them,

13 obtain some positive value, and really maintain the source

14 of recovery that is (indiscernible), which is the \$20

15 million (indiscernible). And so, we thought that taking all

16 that into account, that that was extremely beneficial for

17 the estate and we were -- we felt good about our business

18 judgement. Not that we relied on the judgment of others,

19 but it supported our belief that that was a good settlement

20 under the circumstances that the creditor's committee

21 reached the same conclusion.

22 MR. KIRPALANI: I have nothing further, Your

23 Honor, for the witness.

24 THE COURT: Okay. Anybody in the courtroom who

25 now wishes to question the witness? Yes?

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UNIDENTIFIED SPEAKER: Your Honor, I have only one question.

THE COURT: You have one behind you who I acknowledged first there.

MS. COWEN: I am Stacey Cowen. I am a creditor. (indiscernible). I am an investor. I have had 177,000 shares of Voyager that I bought from 2020 until May of 2022 that at high was three-and-a-half million. Now it's zero. And I -- you know, followed investor relations, press releases, interviewed Mr. Ehrlich, had correspondence with Mr. Ehrlich in text about the company. And I actually had a question. I guess when was he paid off that bonus and when was that additional insurance taken out?

CROSS-EXAMINATION OF TIMOTHY POHL

BY MS. COWEN:

A So, I think I can refresh my recollection and give you exact dates if you want. But I believe that the bonus was in February of 2022, before there was any lending made to (indiscernible), by the way.

Q Okay.

A And then the insurance policy was procured in July of 2022, right before the filing. The additional insurance.

Q Okay. And (indiscernible) correspondence. I didn't say what the texts were, but (indiscernible). I said, "Is Voyager in trouble? I have almost all my savings and my

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And also, I have a question about the equity, whether the intercompany claims that are in question at Topco, if there's going to be an independent committee that is going to be appointed to oversee that. It's not related to either management, the group here. There's going to be someone independent to look at these intercompany claims and see if the equity holders can get an answer --

THE COURT: Okay. That's quite a mouthful, and it's -- a lot of it's not really a question, I guess.

MS. COWEN: Well, intercompany I guess (indiscernible).

THE COURT: It's okay.

MR. SLADE: Your Honor, we would be happy to answer her questions.

THE COURT: Yeah. As I understand it, the first part of your question relates to your personal communications and communications Mr. Ehrlich may have had with others that you think were misleading. And that perhaps gave rise to liability to you or to other investors. It's important, and I think there's been a lot of confusion about this, none of those claims are affected by this plan. Your claims against the Debtor had to be asserted in a proof of claim, but if you have claims against individuals who allegedly committed fraud, the only way they would be affected is if you voluntarily executed the opt-in form to

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kids' wrapped up in your company. And since the equity (indiscernible) customer assets".

He writes back, "Who said we were in trouble?"

I said, "It's just the stock has been down so much and that's been blocked by Celsius while that stuff is going on".

He said, "Every fin-tech company that's public is getting slaughtered in the market".

And I said, "Totally aware. Just wanted to make sure, again. I have my entire retirement savings gone at this point".

And then June 22nd, when the (indiscernible) Capital news came out, Voyager Digital (indiscernible) the article. (indiscernible). He writes, "Nope".

I say, "Great. Thanks". And that's June 22nd, right before the bankruptcy was filed.

Not just me. Other equity investors relied on (indiscernible) about (indiscernible) and adding stocks to the platform about the (indiscernible) to uplift in terms of price. You know, so it wasn't just (indiscernible) Capital (indiscernible) falling it was, you know, additional information that was being transmitted by the CEO saying that the company was healthy. And that's why I held on. So, I think there is some personal liability for the executives of the company.

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agree to give those releases. Otherwise -- and somebody correct me on the Debtor's side if I'm misstating this -- otherwise, your claims against him if you have claims against him are totally unaffected. Totally left in place. Okay? I did want to make sure you understand that.

MR. SLADE: That's correct, Your Honor. Unless they (indiscernible).

THE COURT: Right.

MS. COWEN: That's assuming I have money to pay legal fees if (indiscernible).

THE COURT: I understand. One of the unfortunate things as a bankruptcy judge is I am accustomed to seeing people who have suffered financial losses. Sometimes people who can endure the, and sometimes not. And we can't always do anything about it. And I do sympathize with your situation, I really do. But if you have a claim, I can at least assure you that that hasn't been extinguished by the bankruptcy. The stock may turn out to be worthless. There's nothing I can do to resurrect that.

MS. COWEN: Will there be that independent committee for the intercompany claims that are --

THE COURT: On the intercompany, this may not be the witness, but let's let the Debtor answer your question.

MR. SLADE: Yes. We could direct you to the lawyers who are representing the Topco individually after

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1 this hearing.

2 MS. COWEN: Okay. It would be an independent, not  
3 part of the committee --

4 MR. SLADE: There is a different independent  
5 director at the Topco who is not Mr. Pohl. And he has  
6 separate counsel.

7 THE COURT: So, in other words, the intercompany  
8 issues will be debated. They will be followed by an  
9 independent director at Topco. And I believe, if I read  
10 correctly the latest amended version of the plan that was  
11 filed, there is an agreement that even if there's a  
12 settlement of intercompany issues, if it's over a certain  
13 dollar amount, that it has to be presented to me for  
14 approval, at which time if Topco doesn't like it, it can  
15 object.

16 MS. COWEN: And would the equity be subordinated  
17 to claims let's say of all the estates, \$60 billion or  
18 whatever it ends up being, by all the estates that are  
19 claiming --

20 THE COURT: I am afraid that would be the case.  
21 Because their claims, whether subordinated or not -- first  
22 of all, to the extent that they have claims against the  
23 subsidiaries, they would have to be paid before any of the  
24 subsidiaries could pay any money up to their equity owners.  
25 So, any claims against opco and holdco would have to be paid

1 and-a-half-million-dollar (indiscernible) before bankruptcy  
2 as well that they then sold another 12-and-a-half-million-  
3 dollars in the form of NFTs. All of the executives are  
4 still part of Particle Foundation. Is there any ability to  
5 claw back any of that in terms of either the artwork,  
6 priceless artwork I see, Love Is In The Air, or the NFT sale  
7 commissions that (indiscernible), Steve Ehrlich, all those  
8 people that are on the board of Particle Foundation  
9 Collective. It's a non-profit.

10 MR. SLADE: Well, I'm not sure this is going to  
11 answer your question, but I can tell you that we looked at  
12 Mr. Ehrlich's assets, what he owns that was available. And  
13 none of that was there.

14 MS. COWEN: The assets you looked at, were they  
15 U.S. bank statements, were they blockchain? Because  
16 obviously someone could (indiscernible) blockchain and  
17 (indiscernible) that's not in a U.S. bank statement.

18 MR. SLADE: All I can say is that he testified  
19 under oath essentially that what we saw was all that he had.

20 MS. COWEN: What happened to his \$30 million of  
21 stock that he sold less than a year ago?

22 MR. SLADE: Most of it was not his. Family,  
23 friends. Not his.

24 MS. COWEN: Okay. But Madoff, they clawed back  
25 from family, friends. I mean, that's a way to...

1 before any of their money went up to, by way of dividend  
2 anyway, up to Topco. Now, Topco may have, if it wins on the  
3 intercompany claims, they just have direct recoveries. And  
4 then if the regulators have valid claims against Topco,  
5 those would have to be paid before equity could be paid  
6 because creditor claims have to come first. I don't know if  
7 they have -- one way or the other if they have any claims  
8 against Topco, to tell you the truth.

9 MS. COWEN: I have another question. Market  
10 Rebellion, did they receive any payments or ability to  
11 exercise any options right before the bankruptcy? Were they  
12 able to get any money out of their deal with them? Market  
13 Rebellion is the company that is going to list stocks on  
14 their platform in addition to crypto and they never  
15 delivered on that, and they said starting at the beginning  
16 of 2022 that was going to happen. Is there any exercising  
17 of any (indiscernible) options, anything like that with  
18 Market Rebellion before the bankruptcy was filed that could  
19 be clawed back?

20 MR. SLADE: I believe the answer is no, but I  
21 would be happy to talk to you about that after the hearing.

22 THE COURT: Okay.

23 MS. COWEN: (indiscernible) others. And my last  
24 question was Particle Foundation. All of the executives of  
25 Voyager are also on Particle Foundation, which bought a 12-

1 MR. SLADE: We looked at whether or not as a legal  
2 matter there was any basis to, and there wasn't any.

3 MS. COWEN: Okay. And May 12th when he texted me  
4 about -- you know, I said all my assets are tied up, you  
5 know, is there anything to worry about. He said no. I  
6 think within a day of that, Francine Ehrlich took out a home  
7 equity loan and bought a \$2.3 million property in Nashville  
8 in her name. It's a bankruptcy homestead protected state.  
9 I don't know if you looked into that.

10 MR. SLADE: We know she had some of her own  
11 assets, yes. And we asked whether or not there was any  
12 legal way to pull those into his -- you know, for settlement  
13 purposes or (indiscernible) settlement if that would be  
14 available to (indiscernible) and the legal answer was no.

15 MS. COWEN: Okay. Even though the timing happened  
16 to correspond with the bankruptcy right after that?

17 MR. SLADE: (indiscernible).

18 MS. COWEN: Okay. I would be curious about Market  
19 Rebellion, because (indiscernible). So, that's all. Thank  
20 you.

21 THE COURT: All right. You're very welcome. Yes.

22 MS. CALANDRA: Thank you, Your Honor. John  
23 Calandra from McDermott Will & Emery on behalf of the  
24 Committee, Your Honor.

25 CROSS-EXAMINATION OF TIMOTHY POHL

1 BY MR. CALANDRA:

2 Q Mr. Pohl, I just have one question. It's been a long

3 day. I just wanted to clarify something you said about the

4 scope of the investigation. I think -- I believe you said

5 that you investigated the estate's claims that it may have,

6 but I wanted to be clear that that was against only the

7 insiders, not against anyone and everyone.

8 A Correct.

9 MR. CALANDRA: No further questions, Your Honor.

10 THE COURT: Who do you mean by insiders?

11 THE WITNESS: Officers and directors.

12 THE COURT: Okay.

13 THE WITNESS: I'm thinking to myself whether there

14 were (indiscernible), but I can't think of any.

15 THE COURT: All right. Anybody else in the

16 courtroom who wants to question the witness?

17 Is there anybody on the telephone --

18 UNIDENTIFIED SPEAKER: Your Honor, I am a pro se

19 creditor.

20 THE COURT: Yes. What is your name?

21 UNIDENTIFIED SPEAKER: My name is (indiscernible).

22 I had a couple of questions for the witness regarding Mr.

23 Psaropoulos.

24 THE COURT: Okay, please proceed.

25 BY UNIDENTIFIED SPEAKER:

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1 There was nothing significant there. We looked at how much

2 he has in his bank accounts. There was nothing significant

3 there. He has a retirement account that's relatively

4 modest. And so, there wasn't a lot to get. And so, if you

5 didn't settle and you sued him and you won, you would be

6 depleting (indiscernible) entitled to have the D&O policy

7 advance his costs to defend himself. It eats into the \$20

8 million policy. He has the right to be indemnified if you

9 settle the one, you have that claim against the company.

10 And when we put all of that together, we thought let's

11 preserve the D&O policy assets, let's get the dollars that

12 he can afford to pay without it being in his interest to

13 fight it. And that's how we thought about the settlement

14 with -- really with both of them. But they had different

15 financial profiles, so we didn't reach the same outcome.

16 Q Thank you. No further questions.

17 THE COURT: Okay. Anybody else on the telephone

18 who has questions for Mr. Pohl?

19 MR. HENDERSHOTT: Yes, Your Honor. Thank you.

20 It's Tracy Hendershott, pro se creditor.

21 THE COURT: Okay. Go ahead, Mr. Hendershott.

22 MR. HENDERSHOTT: Thank you, sir.

23 CROSS-EXAMINATION OF TIMOTHY POHL

24 BY MR. HENDERSHOTT:

25 Q Mr. Pohl, I appreciate your time. I especially

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1 Q I heard in your earlier testimony that half of his

2 claim on Voyager he was contributing is worth roughly

3 \$60,000. I also noticed in the filing that his net worth is

4 redacted. Just for the creditors, could we know how much

5 money is there, so we know there's nothing to pursue or give

6 us a ballpark figure for that net worth for Mr. Psaropoulos?

7 MR. KIRPALANI: I would just caution the witness

8 that we do have a confidentiality obligation with respect to

9 Mr. Psaropoulos and his counsel. You can answer the

10 question with that instruction.

11 BY UNIDENTIFIED SPEAKER:

12 A Sure. I'll try to follow that. He does have some

13 other assets. He has a house. He has some money in a 401K

14 plan. And he has some money in a bank account. They are

15 not what I would describe as significant amounts of money

16 (indiscernible). And certainly not anywhere close to what

17 is available under the D&O policies. Not remotely close.

18 And so, when we thought about settling -- and nobody settles

19 by giving up every single penny that they have -- we did not

20 -- he had one house. I was about to say we didn't -- we

21 thought it was not -- we would never get settlement offer

22 going after a person's house. If a person had owned 14

23 houses, that would be different. But he owned one house,

24 owns one house.

25 So, we looked at his house, we looked at his value.

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1 appreciate you and counsel from Quinn Emanuel of starting

2 off with the nice summary. That was very helpful.

3 Your focus was exclusively -- I believe you stated with

4 (indiscernible) activity and series of events leading up to

5 that loan. Did I hear that correctly?

6 A No, not quite. It wasn't our exclusive focus. I think

7 when this case started, everybody understood that that was a

8 big part of what had gone wrong here. And so, that was at

9 the top of everybody's mind that ought to be looked --

10 Q Okay. A primary focus. So, what I'm asking is not

11 necessarily whether you have a lot of details of how that

12 whole sequence of events went. I'm curious if you are aware

13 of whether the executives of voyager were personally aware

14 of the collapse of 3AC specifically if they were notified by

15 3AC that the founders were on the run, nonresponsive, and

16 were recommended to immediately call back all of the loans.

17 A Yes, I am. In fact, we spent a lot of time staring at

18 the timeline of the events, culminating in a -- I am doing

19 this from memory without refreshing my recollection. I

20 think that was in mid-June. It was around the 13th or 14th

21 or 12th, one of those dates where they were told for the

22 first time that they've got to try to recall the loans. And

23 that it was because they were on the run, the 3AC founders.

24 Q So, in the filing of the investigation that the UCC

25 counsel performed, it does state June 14th. So, that

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1 recollects with your memory as well it sounds like.

2 A Good. I'm glad to hear that.

3 Q And at that -- or also in the filing from the UCC

4 counsel, they state Mr. Psaropoulos, Mr. Ehrlich were in

5 direct communication with 3AC. That's when they were told

6 the founders are on the run. I think in quotes here it says

7 they are (indiscernible) and the suggestion is that you

8 recall of its loans immediately. And the testimony in your

9 investigation (indiscernible) states Mr. Psaropoulos and Mr.

10 Ehrlich (indiscernible) to that knowledge. Does that

11 correlate with your memory?

12 A It does.

13 Q Great. Also, did you look at any of the communications

14 that was released? I know we just heard the other creditors

15 saying how they have materially false statements coming from

16 their executives. Was that part of your investigation on

17 the larger scale specifically with press releases

18 (indiscernible) on a large-scale basis?

19 A Well, you broke up there a little bit, so I missed some

20 of those words, but I think I get the gist, which is -- and

21 again, so we had counsel review -- ask for and then review --

22 -- as I said, there were 30 information requests. I'm sure

23 it included all communications that were relevant to this.

24 There were, I don't know about, 10,000, 11,000 documents,

25 40,000 pages that were reviewed, something like that. You

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1 larger investigation?

2 A I recall knowing that there was (indiscernible).

3 Q And so, release of that information on the exact same

4 day that they notified that we're headed towards the path of

5 bankruptcy, would you quantify that as materially false?

6 MR. KIRPALANI: I'm going to object, Your Honor.

7 It calls for a legal conclusion.

8 THE COURT: that's true. It does. Sustained.

9 MR. HENDERSHOTT: We can't get the opinion of the

10 lead director for the investigation what their consideration

11 of facts? He talked earlier that he didn't feel that the

12 actions (indiscernible), so I think it's relevant to

13 understand his --

14 THE COURT: Just let me be clear. The exact words

15 you used called for a legal opinion. You can ask him if he

16 considered that it gave rise to any claims on behalf of the

17 company and if so, how he evaluated and whether he pursued

18 them.

19 BY MR. HENDERSHOTT:

20 Q Okay. So, Mr. Pohl, did this action give rise to

21 claims against the company that would warrant actions

22 (indiscernible) --

23 A I think not. Right? I think whether or not they were

24 false at the time they were made, highly unclear. Things

25 were moving very, very quickly. 3AC turned out to be a

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1 know, Ms. Frizzley and myself didn't manually review those

2 ourselves. We had counsel review that and write a report

3 for us and flag issues for us that they thought were worth

4 flagging. I can't -- (indiscernible) specific communication

5 one by one that I can tell you for sure was looked at.

6 Q Would you say that you looked at all of the press

7 releases which, you know, very significant loss distribution

8 intended to (indiscernible) customers?

9 A Yes.

10 Q So, do you recall that there was a press release on the

11 very same day that the executives of Voyager found out that

12 basically there was (indiscernible) fifty percent of their

13 assets under management at the time, by being directly

14 (indiscernible) by 3AC, that the very same day they released

15 the press release -- and I can I quote this to you, or do

16 you recall it?

17 A You can quote it to me.

18 Q So, one sentence on this press release specifically

19 attributed to Mr. Ehrlich, chief executive officer and

20 founder. And I quote, "The company is well-capitalized and

21 in a good position to weather this market cycle and protect

22 customer assets."

23 On the very same day, they were notified by 3AC

24 basically that they were headed towards bankruptcy. Do you

25 recall investigating that press release as part of the

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1 gigantic fraud. Nobody understood, appreciated. And with

2 the benefit of hindsight, things were moving with extreme

3 rapidity. They were doing the best they could. Did they

4 (indiscernible) --

5 Q But just to clarify, you said you thought they were not

6 false?

7 A No. I said I don't know whether they were false at the

8 time that they were made. I don't know. But what I do know

9 is --

10 Q You thought that press release was not false?

11 A I said I don't know if it was false at the time that it

12 was made. But what I do know is that whether or not --

13 Q So, --

14 A Could I finish?

15 THE COURT: You have to let him finish, Mr.

16 Hendershott.

17 BY MR. HENDERSHOTT:

18 A What I do know is that whether or not there is an

19 estate cause of action or breach of a fiduciary duty in the

20 middle of a crisis --

21 Q Hello?

22 A Yes. Can you hear me? Okay. We're trying to, at a

23 time when we believed that things were going to be

24 relatively controllable. Turned out to be wrong about that;

25 doesn't mean he didn't believe it. You know, did that rise

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1 to gross negligence or bad faith, sufficient to give rise to  
2 an estate cause of action for a breach of his fiduciary  
3 duties? We didn't think so. A claim that you could  
4 prosecute and win? We didn't think so.

5 THE COURT: Are you still there, Mr. Hendershott?

6 MR. JONES: Your Honor, I think Tracy fell off the  
7 line.

8 THE COURT: What happened?

9 MR. JONES: Seth Jones here. Tracy got  
10 disconnected somehow, I think, but can I ask a few questions  
11 until he gets back?

12 THE COURT: Sure.

13 CROSS-EXAMINATION OF TIMOTHY POHL

14 BY MR. JONES:

15 Q I have a question. Is taking out a \$10 million  
16 insurance policy the day before filing for bankruptcy  
17 standard practice?

18 A Actually, it is. It depends on, you know, whether it's  
19 standard practice or not -- let me answer it this way, every  
20 case is different. Depending on what the current company's  
21 state of their D&O insurance is, it is not at all uncommon  
22 headed into a restructuring to need to bulk up -- sometimes  
23 that means obtaining new insurance, sometimes it means  
24 adding to insurance that you have, but to end up -- and it  
25 costs money to do this if you need to do it -- to have a

1 said before was that they did a number of things with  
2 respect to their insurance; that was only a part of the  
3 package. And the officers and directors were doing that on  
4 the advice of counsel and they're entitled to rely on that,  
5 so they did. It's not uncommon. It was expensive.

6 And again, whether or not if you thought an  
7 officer or director did something wrong by approving it,  
8 they still -- I'll use the same phrase again -- you still  
9 can't get blood from a stone. They did not have the  
10 financial wherewithal personally to pay a significant  
11 judgment, so we preserved the ability to go after for these  
12 things the party that does have the financial wherewithal to  
13 pay a significant judgment, which is the insurance  
14 companies, including with respect to that \$10 million that  
15 was paid.

16 Q What about loaning out 208 million three days before  
17 the platform froze while the platform had a cap on  
18 withdrawal limits; is that standard practice?

19 A I don't know what you're talking about.

20 Q The Alameda loan, 50,000 Ethereum and 6500 Bitcoin was  
21 loaned out on June 27 and the 28th to Alameda and the  
22 platform froze on July 1st. And obviously we had a big hole  
23 already, so they give out 208 million just to freeze the  
24 platform on July 1st.

25 A Well, if you're asking me about loans that they made to

1 complement of insurance coverage for your officers and  
2 directors who you need to be willing to stay with the  
3 company in the bankruptcy proceeding, as well as to attract  
4 independent directors, such as myself, to be willing to get  
5 involved in a distressed situation, so it is very common to  
6 obtain policies.

7 Q Okay. But as the judge has said before, it was  
8 basically an escrow of this fee because it's a \$10 million  
9 policy just to pay out \$10 million. So, where's the benefit  
10 for the creditors?

11 A I think what you're saying -- again, it was hard to  
12 hear -- is that there seems something odd on the surface  
13 about paying \$10 million for \$10 million of coverage. We  
14 agree with that if that's the right way to describe it. We  
15 agree with that, which is why we preserved the ability to go  
16 after the insurance company for doing -- to see if we can  
17 recover, the estate can recover the \$10 million that was  
18 paid from the party that got the money, the insurance  
19 company.

20 Whether there's a good claim there or not, it  
21 seemed to us it was a good enough potential --

22 Q But that's not ethical to do what they did. It's for a  
23 \$10 million payout, but \$10 million of creditor money on the  
24 board; is that not ethical?

25 A Well, I think they didn't only do that. So, what I

1 Alameda in the month of June, Alameda at that time was  
2 certainly not believed to be -- it wasn't Three Arrows. It  
3 was not believed to have any financial distress. It was  
4 viewed everywhere in the marketplace as an excellent  
5 counterparty. Everybody wanted to do business with Alameda  
6 and the company, Voyager, made money for its customers by  
7 making its loans; it was an integral part of its business.

8 Q I understand, but --

9 A So that was -- look, in hindsight, the fact that  
10 Alameda turned out to be Alameda, you know, hindsight is  
11 20/20, nobody at the time that those loans were made thought  
12 that there was anything wrong with making money and being  
13 paid -- by being paid for loaning assets to Alameda. That  
14 was not the --

15 Q Is that the right thing to do when you have a goal, you  
16 know, so you give out 208 million and then you close down  
17 the shop three days later. That money could have gone to  
18 other customers or made the hole smaller in hindsight.  
19 Obviously, you have issues. Why are you lending out \$208  
20 million after you just lost 650 million on an  
21 uncollateralized loan? Is that not lack of due diligence or  
22 what, negligence, anything?

23 A Well, it wasn't a lack of due diligence with respect to  
24 the counterparty in that transaction.

25 Q If they would have held onto that money, maybe they

could keep going longer, right, the business?

A Well, again, if Alameda was a creditworthy counterparty, then they were obligated to pay you back that money with interest. That was a business to pay --

Q Yeah, and that would have paid back --

A That was a core part of the business that Voyager was in. So, if your questioning is suggesting that once the Three Arrows situation unfolded that the only thing Voyager should have done was shut down its business and if they did anything short of that, they were somehow doing the wrong thing, I guess I would have to say we wouldn't agree with that.

Q I mean, but they knew how much they were going through. They blew through that 35 million that quickly, right, so what happened in those three days; did they have a bad bank run or what?

MR. KIRPALANI: Objection, Your Honor. I think this question has been asked and answered.

THE COURT: I'll let him go just this one.

THE WITNESS: I'm not sure what the question is.

THE COURT: I'm not sure either. What exactly are you asking, Mr. Jones? There was a loan you say on the 27th.

MR. JONES: It's a --

THE COURT: A loan is not a gift, right? A loan

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that we entered into a sales transaction with them, which was the plan that was originally filed. The whole world was defrauded by FTX and Alameda blowing up and nobody understood it and I think people still don't understand it.

But certainly, in June of 2022, trying to stay in business in the business that you were in, making a loan to what everybody believed was a completely credible as a party. And then, in fact, actually having loan repaid, in fact, and you made interest in the meantime certainly didn't suggest to us that there was anything inappropriate about that transaction.

THE COURT: Okay.

BY MR. JONES:

Q Steve Ehrlich said that pre-bankruptcy, they had one offer proposal, but it was too low of a -- a lowball offer to swallow, so to speak. Can you speak on that one offer?

A I think what -- again, our job was to look to see if we thought there were estate causes of action against insiders. The observation that you just made, which we're aware of, is consistent with appreciating that there were no improper motives here; they were on the same side. They believed that the business was able to be rehabilitated and they did not have contrary interests that would give rise to sort of, you know, violation of their duty of loyalty, which is in legal terms, what you're sort of getting at; it was an

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is not a gift. A loan --

MR. JONES: Right, right, right.

THE COURT: So, what issue --

MR. JONES: They already knew that -- they knew they had a \$650 million hole on June 18th.

THE COURT: Right.

MR. JONES: So, they had a big hole and they decided, oh, let's keep lending out money with an unstable market, maybe they would have helped the business to go a little longer instead of giving away \$208 million to FTX.

THE COURT: Mr. Pohl, did you examine that transaction and did you and the special committee reach any conclusions about it, whether the company had any claims based on?

THE WITNESS: We looked at all of the transactions and we did not believe that there were any viable claims with respect to that transaction.

THE COURT: Why in respect to this -- was the loan repaid? Is this the loan that's the subject of the preference action now?

THE WITNESS: This loan ultimately, in fact, was repaid, number one. And again, number two, at that time, even after we filed for bankruptcy, there was no indication at that time that Alameda and FTX were anything other than completely credible. In fact, that was so much the case,

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indicia of just the opposite. They were believers that the company was healthy and had value, so much so and they were stockholders, that they did not pursue a transaction that I'm sure today everybody wishes had happened. It wasn't really a transaction; it was an offer, but you get my point.

Q Can you tell me how fast they blew through that \$35 million from FTX?

A I don't recall, as I sit here, when they got it back. I know that when we filed the case, there was discussion about that was the plan was to go get those monies back and eventually they were gotten back.

Q I mean FTX gave it to Voyager. Now it's subordinated, right, the plan?

MR. KIRPALANI: I'm sorry. Is the question -- just one clarification. Is the question asking about money that FTX loaned to Voyager or that assets that Voyager loaned to FTX?

MR. JONES: FTX gave it to Voyager.

MR. KIRPALANI: And what's the question with respect to the \$75 million?

BY MR. JONES:

Q 75 million. I believe they're, what, allowed to claim that once a month; was it 500 million originally. FTX told them you can only send, what, 75 million a month?

A Well, I'm trying if I'm following your question. We

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1 were certainly aware that FTX had agreed to loan money to  
 2 Voyager in installments. I don't remember as I sit here  
 3 today what the rules were. They couldn't borrow it all at  
 4 once. They borrowed what they were allowed to borrow, which  
 5 was the initial 75 million, and then I don't think they were  
 6 ever allowed under the terms of that loan to borrow anymore,  
 7 but that's what they borrowed.

8 MR. JONES: That's all I have. Thank you.

9 THE COURT: Mr. Hendershott, are you back on the  
 10 line?

11 MR. HENDERSHOTT: I am, sir, thank you. I've been  
 12 having a little bit of technical challenges. Appreciate  
 13 (sound drops). Hello?

14 THE COURT: Yes, we're here. You may proceed.  
 15 You may ask your questions.

16 MR. HENDERSHOTT: All right, thank you.

17 CROSS-EXAMINATION OF TIMOTHY POHL (CONT.)

18 BY MR. HENDERSHOTT:

19 Q So, thank you, Mr. Pohl, for letting me jump back in  
 20 here. Before I got disconnected, we were talking about the  
 21 press release with the statement that the company is well  
 22 capitalized in a good position to weather the market cycle  
 23 and I couldn't understand if you were saying that that was  
 24 false or not.

25 A I don't know whether it was false or not.

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1 of \$650 million to 3AC was the precipitating event for the  
 2 bankruptcy, but it precipitated people wanting to withdraw,  
 3 they had to raise the gets. It set off a chain reaction  
 4 that ultimately led to the bankruptcy, I think that's right.

5 BY MR. HENDERSHOTT:

6 Q Okay. (Indiscernible) thank you for the clarification.  
 7 So, at one point did the executives at Voyager know  
 8 definitively they were filing bankruptcy?

9 A You know, I'm not a hundred percent sure. We were  
 10 appointed on the eve of the filing or the day before the  
 11 filing, so certainly by then they knew because we were  
 12 appointed as part of the filing process. How many days  
 13 before that, it was a foregone conclusion; I could only  
 14 speculate.

15 Q You can only speculate. There was no review of  
 16 internal communications? You know, I would assume that that  
 17 was a critical element you identify as part of a thorough  
 18 investigation.

19 A I mean, not really. The exact date that they --

20 THE COURT: Mr. Hendershott, let me just interrupt  
 21 to explain something here. What the witness was charged  
 22 with doing was figuring out if the estate -- in other words,  
 23 Voyager itself -- had claims to pursue against officers and  
 24 directors.

25 Your claims are all about whether the officers and

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1 Q You do not.

2 A No. At the time the statement was made, I don't really  
 3 know if it was false. I don't know what -- more  
 4 importantly, I don't know whether he thought it was false.

5 Q Did we not just clarify on the same day that 3AC  
 6 notified them that their founders were on the run and it's  
 7 really bad and we have to recall our loans? I'm struggling  
 8 to understand the dichotomy of the facts here. You're  
 9 agreeing that both are coming to a conclusion that you think  
 10 that it might be truthful.

11 A All I'm saying is the loans to 3AC were not the only  
 12 loans that they had. They had a credit facility with  
 13 Alameda. They have a lot of other -- that was one part of  
 14 their business, it was significant, but what was happening  
 15 with 3AC was evolving in real time. Nobody completely  
 16 understood it other than with the benefit of hindsight, and  
 17 he was I think in good faith trying to keep things as calm  
 18 as possible and figure out what to do next, that's all.

19 Q So \$1 billion hole from 3AC is you feel there was other  
 20 root causes for the bankruptcy?

21 MR. KIRPALANI: Objection. Lacks foundation with  
 22 that \$1 billion reference.

23 THE COURT: Not really. I think I can't count the  
 24 number of papers I've read about this \$1 billion hole.

25 THE WITNESS: I think we all think that the loss

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1 directors issues public statements that were misleading to  
 2 customers or to investors, in which case the injured parties  
 3 would have been the customers or investors, not Voyager  
 4 itself, in which case it wouldn't be a claim belonging to  
 5 the estate; it would be a claim belonging to the account  
 6 holders and the investors.

7 So, when you're asking this witness whether he  
 8 thought these events, you know, were problems and the  
 9 witness is trying to I think tell you he's trying to  
 10 evaluate whether the estate had anything to pursue on those  
 11 points. Do you understand the difference there?

12 MR. HENDERSHOTT: I do, but I'm still a little  
 13 confused. Would you be the one that determines whether it's  
 14 gross mismanagement, fraud, dishonesty, because the witness  
 15 is actually throwing out legal terms and I thought that that  
 16 was the point of his investigation is to determine causes of  
 17 action that results in potential claw backs or penalties.

18 I'm confused, Your Honor. I'm not sure who  
 19 determines whether these actions are material faults,  
 20 whether there is harm, whether there's dishonesty. Is that  
 21 you, sir, Judge?

22 THE COURT: Well, let me just -- I only rule on  
 23 lawsuits and motions that are in front of me. I don't have  
 24 any free reigning authority to just make rulings on things  
 25 that aren't actually brought properly in front of me.

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1 But as to whether false statements were made about  
2 Voyager's financial condition, it's hard for me to see how  
3 that would give rise to a claim by Voyager against its own  
4 officers because Voyager wouldn't be the injured party;

5 arguably, it would be the perpetrator through its officers.  
6 So, what kinds of claims Voyager might have is if  
7 there were things that were done recklessly, carelessly, in  
8 breach of fiduciary duty that injured Voyager itself, okay?

9 MR. HENDERSHOTT: Correct.

10 THE COURT: Not so much whether there was anything  
11 wrong of any kind that was done with respect to any human  
12 being, but rather whether Voyager, either by virtue of the  
13 bankruptcy laws or other state law, had rights of its own to  
14 pursue, and if it did, whether they should be pursued or  
15 resolved.

16 So, claims based on misrepresentations about  
17 financial statements would not ordinarily, and I doubt here,  
18 be thought of as claims that belonged to Voyager to be  
19 evaluated by Voyager or investigated by Voyager really.

20 If customers, creditors, you know, account holders  
21 think that they were misled as to the financial statements,  
22 then they may or may not have claims based on that. If they  
23 wish to assert such claims against Voyager itself, it should  
24 have been part of the proofs of claim. If they think they  
25 have claims against the officers, I can't express any

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1 a relevant concept. We have three members of the board: two  
2 of us are independent and we're newly appointed and we're  
3 two of the three members of that board.

4 Q And is this standard procedure that the person that's  
5 being investigated for their actions would actually be the  
6 board member that you are a member of with no leadership?

7 A Well, all powers to investigate and dispose of, through  
8 settlement or release or otherwise, of Voyager LLC causes of  
9 action against any officer or director, including Mr.

10 Ehrlich, would delegate it to the special committee that he  
11 is not on. So, he doesn't have any authority over, even as  
12 a board member, over the subject matter that we're talking  
13 about, not even the little authority that he would have if  
14 it wasn't delegated and the two of us as independents could  
15 outvote him two to one on any topic. So, he doesn't have  
16 any authority as a board member over the subject matter that  
17 we're discussing.

18 Q Interesting, thank you. So, who appointed you to this  
19 special committee and this board?

20 A I think Miss Frizzley and myself were recommended to  
21 the full board of the parent company by Kirkland & Ellis.  
22 We were interviewed by -- I can't say the whole parent  
23 company board, but I remember being interviewed by some  
24 people. And then we were -- and I don't think we were the  
25 only people who were interviewed, not that I know that for

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1 opinion about whether they are or are not valid, but they  
2 probably wouldn't be in my court because I'm a bankruptcy  
3 court and they would probably be in some other court against  
4 the other individuals.

5 There's nothing about the bankruptcy process or  
6 the fact that the estate is evaluating its claims they would  
7 really bring here the issue of whether somebody defrauded  
8 you about the financial condition, for example. Does that  
9 help?

10 MR. HENDERSHOTT: It sounds very -- you know, a  
11 huge disparity of in favor of the Debtors. But, yes, thank  
12 you for the clarification.

13 BY MR. HENDERSHOTT:

14 Q Okay, Mr. (indiscernible) very long. So, can you share  
15 who is currently on your board and when were they appointed  
16 to their board position?

17 A Well, there's more than one board, right. At the  
18 Voyager LLC, which is the board that I'm on which is the  
19 operating company, it's myself, it is Jill Frizzley, and I  
20 think we're the only -- oh, and Steve Ehrlich I think is  
21 also a board member, but he's not a member of the special  
22 committee, so there are three board members at Voyager LLC,  
23 the operating company.

24 Q Are you the chairman of that board?

25 A I'm not even sure we have a chairman. It's really not

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1 sure but that's not common -- and then we were selected.

2 So, the board of the parent company advised by  
3 recommendations from their advisors recommended us.

4 Q And that would be the (indiscernible) of the holding  
5 company; is that correct?

6 A I think it was the board of the holding company, that's  
7 right, and I couldn't remember, unless my recollection was  
8 refreshed, the name of every member of that board.

9 Q And who's the chairman of the holding company?

10 A I want to say I think it's Mr. Ehrlich, but I'm not 100  
11 percent sure. It's really, the reason I'm not 100 percent  
12 sure is that it's really not relevant to what we did.

13 Q And relevant to me, sir.

14 A No, I know. I'm just explaining why I don't know the  
15 answer off the top of my head.

16 Q So the holding company chairman of the board created  
17 and hired you specifically to investigate itself. And who  
18 paid for your services, sir?

19 A Voyager LLC.

20 Q Pardon?

21 A Voyager LLC, the company of the board that I'm on.

22 Q I got it. Just for my knowledge, per chance, you know,  
23 Steve Ehrlich sign your check and paid for your services?

24 A I don't think he signs my check. Actually, I don't get  
25 a check; I get an ACH, so I don't know. I do know that

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1 everything that we do --

2 Q So as chairman of the board -- go ahead.

3 A No, no, go ahead.

4 Q I was going to say as chairman of the board, he would

5 be -- ultimately, so he selected you. The investigation of

6 (indiscernible), he's the one that compensates you, as he

7 does all board members. Am I understanding this correct?

8 A Again --

9 MR. KIRPALANI: Objection. Mischaracterizes

10 the...

11 THE WITNESS: Yeah. The company pays us --

12 THE COURT: He can answer.

13 THE WITNESS: -- like everybody else.

14 THE COURT: The company pays. You're not saying

15 Mr. Ehrlich paid out of his own pocket, are you, Mr.

16 Hendershott?

17 MR. HENDERSHOTT: No, no. I said he has the final

18 authority to compensate all board members, including Mr.

19 Pohl, and there's no one above the board or Mr. Ehrlich as

20 chairman of the board that would compensate the board if

21 it's not a treasurer that's compensated.

22 THE COURT: He's chairman of the board; he's not

23 God.

24 MR. HENDERSHOTT: He's chairman of the board

25 that's making that decision.

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1 total, something like that, seven? Again, you'd have to

2 refresh my recollection.

3 Q So, yeah, typically, it's an odd number. I'm not sure,

4 so that's why I'm asking. But I have been made aware that

5 six weeks before filing bankruptcy, there was significant

6 revision to the holding company boards by Mr. Ehrlich, the

7 chairman, replacing and appointing board members and I

8 believe even expanding it at that point. Are you aware of

9 that significant transition?

10 A No.

11 Q Okay. All right, so do you know -- and I believe you

12 already covered (indiscernible) and forgive me, I did lose

13 connection for a while. So, you said that the \$15 million,

14 there was a basket of other services that out of that

15 carveout of the \$15 million, there was a dollar-for-dollar

16 transfer 24 hours before filing bankruptcy. Then the

17 potential recovery for the creditors, there was an exclusive

18 legal defense policy for the officers. Did I hear that

19 correct?

20 A Not quite, that's not quite what I said. I think there

21 was \$15 some odd million dollars paid for a combination of

22 things. One of those things was an incremental \$10 million

23 D&O policy. Whether or not one would characterize that \$10

24 million policy as having been paid for with 10 million of

25 the \$15 million dollar for dollar is probably a matter

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1 THE COURT: You know, Mr. Hendershott, he's

2 chairman of the board; he's not God. It's not like he

3 doesn't answer to anybody else. He answers to the rest of

4 the board.

5 MR. HENDERSHOTT: And that's a good question.

6 BY MR. HENDERSHOTT:

7 Q So when I first asked you, Mr. Pohl, who are the

8 members of the board, I was referring to the holding company

9 board. Could you just -- do you know all the members of the

10 board?

11 A Not off the top of my head, no. You'd have to refresh

12 my rec- -- it's public information. You'd have to refresh

13 my recollection. I didn't report -- I don't report to the

14 holding company board, so that's not why it's not relevant

15 information to me. I don't report to them. Nothing that I

16 was tasked with doing is sort of in their purview. I don't

17 believe that they actually have the power to fire me,

18 although some days, I wish they would; that's a joke. And

19 so, that's why it's not really relevant, which is why I

20 don't remember all the names of all the people on that

21 board.

22 Q Could you just say how many members are on the holding

23 company board?

24 A Nine, is it up to? There's an independent director at

25 the holding company also. Is it eight, nine members in

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1 that's going to get litigated. But because it could be

2 characterized that way, we identified that there is a

3 potential fraudulent conveyance claim against the insurer

4 and we preserved it.

5 Q I'm sorry. Preserve it means what?

6 A It means that the winddown estate for the benefit of

7 creditors has the right to sue the D&O carrier who received

8 the \$10 million to return that \$10 million on -- I'll do

9 this at a super plain English level -- on the theory that

10 the company, Voyager, didn't really get any benefit from

11 paying \$10 million for a \$10 million policy. I'm not

12 opining as to whether that's a meritorious claim or not, but

13 that's the type of claim that, in some form or fashion,

14 might have merit and has not been released under the plan.

15 Q Okay. Thank you for that clarification. Speaking

16 about releases, are you part of the decision making to grant

17 releases to all of the executives, officers, and employees

18 of Voyager?

19 A No, we weren't part of the decision making. What we

20 did do was make our own business judgment as to whether

21 there was anything inappropriate about those releases. As a

22 result of all of the things that we investigated and with

23 respect to, as I've testified, with respect to Mr. Ehrlich

24 and Mr. Psaropoulos, we were not comfortable with them being

25 released from certain claims and causes of action as a

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1 result of our investigation, and so we preserved those  
2 claims. We preserved the ability for the winddown estate to  
3 sue them for those things. We limited the recovery to the  
4 D&O policy, and we settled with the two of them by having  
5 them actually pay into the estate as part of the  
6 (indiscernible). We did not find --

7 Q So you did make the decision on releases.  
8 A We did not find that there were any other Voyager  
9 company estate causes of action that had any merit against  
10 other officers and directors, and so, we support the  
11 releases with respect to other people. And I would note  
12 that there was an important estate benefit from obtaining  
13 those releases, which is that those parties have, at least  
14 the senior officers, have rights to be indemnified and they  
15 have rights to be reimbursed if they are sued from the D&O  
16 policies which would deplete them.

17 So, the idea that we wanted to preserve the \$20  
18 million potential D&O recovery for the claims that we  
19 thought did have merit and not see that potential pool of  
20 assets that could be settled going forward or litigated to  
21 conclusion depleted by having other officers and directors  
22 against whom frivolous claims could be brought have the  
23 right to deplete that by having their expenses reimbursed.  
24 So, in the cost-benefit analysis of the whole package  
25 because we didn't think that there were good claims against

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1 with you.  
2 Q So we're keeping faith in that one as a benefit, but  
3 your perspective is that was not taken from the credit  
4 recovery pool inappropriately?

5 A Well, I don't know, but I know that the ability to  
6 probably get it back from the only person that has the  
7 wherewithal to give it back has been preserved. And I also  
8 know that the officers and directors who, when the board  
9 approved spending the money to get that policy, they were  
10 doing so on the advice of counsel.

11 Q Okay. All right, well, thank you, sir. One last  
12 question. Going back to the person that's being  
13 investigated being the chairman of the board that selects  
14 you and ultimately is responsible for your compensation, how  
15 do you as a professional -- and thank you for being one --  
16 how do you as a professional distance yourself from the  
17 influence of the individual that is financially supporting  
18 you?

19 A I think that's a fair question honestly. I'm  
20 completely distanced from it. So maybe you -- so, look,  
21 I've been retired for the last three or four years, right?  
22 I don't get paid a significant sum of money relative to the  
23 amount of money that I made when I was working to take on  
24 these assignments, not even close, number one.

25 Number two, I am independent. I don't have any

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1 the other officers and directors and because we wanted to  
2 preserve the maximum amount of the D&O policy to be  
3 available for where the claims might be good; that's why we  
4 supported them.

5 Q Okay. So going back to the \$20 million D&O policy, the  
6 \$10 million was taken from the creditor recovery pool 24  
7 hours before filing bankruptcy. Could you share what the  
8 cost was for the previous historical \$10 million that  
9 preceded that one; is that dollar for dollar? You don't  
10 know.

11 A I don't know, but I doubt it.

12 Q Right. What would be standard in that (indiscernible)  
13 experience?

14 A I'm not an insurance expert, but D&O insurance is  
15 expensive. I don't know how long those policies were in  
16 place. I think it's actually not one policy, it's a number  
17 of policies, so I don't know the answer.

18 Q Would you assume that they were dollar for dollar?  
19 Typically, with insurance in my experience, you get a higher  
20 potential payout when the claims or the --

21 A Yes.

22 Q -- fees that you incur?

23 A I would assume that they were not dollar for dollar,  
24 which is why the later one that could be construed as dollar  
25 for dollar is one that raised a red flag to us, so I agree

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1 relationship with any of these people. I didn't work at  
2 Kirkland & Ellis. I didn't work at any of these other  
3 firms. None of these people used to work for me. They  
4 don't put me on their boards of directors. This is the one  
5 and only time I've ever been put on a board or recommended  
6 to be put on a board by this law firm. I had never heard of  
7 any of these people before. I had never heard of Voyager  
8 before. I could barely spell Bitcoin before.

9 So, I am completely independent and it doesn't  
10 really make much difference to me, you know, whether or not  
11 I find that they did something wrong or whether I find that  
12 they didn't do anything wrong. I don't have any skin in the  
13 game. I don't have any stake. I am as independent as it --  
14 I don't know how you could be more independent than that, at  
15 least as I understand what the word independent means.

16 The can't fire me. I guess they could fire me,  
17 but they'd probably have to deal with the judge. So once  
18 this process begins and you form a special committee and you  
19 retain people who are, in fact, independent and you set out  
20 to have a special committee investigation, I suppose if Mr.  
21 Ehrlich -- not that he would ever do this -- but if he  
22 wanted to, if he didn't like where it was going and he tried  
23 to fire, you know, the people who are investigating him, I  
24 think that probably wouldn't come out that way; that's not  
25 how it works.

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1 Q So, you know, we would hope not. Absolutely, that's  
2 how it works. So, is it possible that by you having, you  
3 know, a reputation in this small niche market that you're  
4 providing being hired by the person that's being  
5 investigated and binding releases and a lot of other, you  
6 know, kind of softball penalties for the investigation,  
7 would that not put you in kind of a higher echelon of  
8 getting hired by the next bankruptcy CEO who's being  
9 investigated; would there be a financial incentive?

10 A I'm not sure I understand your question, although I'll  
11 resist the temptation that I think you're insinuating  
12 something.

13 Q Well, I'm asking, you know, just in this small niche  
14 market that you're in of being an independent investigator,  
15 wouldn't a favorable outcome of prohibiting releases and  
16 findings, would that be favorable for your next assignment?

17 A I'm not in a niche market. This is the only  
18 investigation that I have ever done as an independent  
19 director. I did some -- I led some when I was a lawyer and  
20 I was involved in some when I was a banker, but I'm not out  
21 there looking for board seats. People call me from time to  
22 time and if I think I can help and it interests me for  
23 whatever perverse reason, sometimes I say yes because I can  
24 only play so much golf, but I don't -- I'm not thinking  
25 about the next deal. I'm not in the business of doing

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1 MS. DIVITA: Okay.

2 CROSS-EXAMINATION OF TIMOTHY POHL

3 BY MS. DIVITA:

4 Q My first question here is, do you mind clarifying who  
5 exactly was responsible for conducting the financial review  
6 portion of the special committee's investigation? I believe  
7 you mentioned there was no financial advisor appointed.

8 A Well, no. I think when the special committee hired  
9 expert outside, they did the primary legwork factually with  
10 respect the factual underpinnings of our conclusions; that's  
11 the meat of the investigation. We did not retain, and we  
12 don't think we needed to retain, a financial advisor to  
13 assist us.

14 If we had financial advisor type questions about  
15 the business or about something historical that was sort of  
16 beyond the purview of what lawyers could answer or were  
17 qualified to answer, we from time to time availed ourselves  
18 of the Debtors' professional financial advisors at BRG.  
19 There wasn't really a lot of that. The only thing financial  
20 with respect to our investigation per se was, you know,  
21 looking at the financial information of Mr. Ehrlich and Mr.  
22 Psaropoulos, which we did, and we didn't need a lot of  
23 financial expertise to understand the information that they  
24 provided to us.

25 Q Okay. So, you didn't see anything at least unique in

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1 investigations.

2 Q Got it, great, and I certainly didn't mean to assume  
3 anything. I'm just trying to learn more about, you know,  
4 all these case rules I've never been exposed to.

5 MR. HENDERSHOTT: So, thank you, sir, for your  
6 time and I can cede the podium. Thank you.

7 THE COURT: Very good. Anybody else on the phone  
8 who wishes to cross-examine Mr. Pohl?

9 MAN 1: I have one question.

10 CROSS-EXAMINATION OF TIMOTHY POHL

11 BY MAN 1:

12 Q For the avoidance of doubt, I know you sort of  
13 clarified this earlier, Mr. Pohl, but when you state  
14 insiders were the primary focus of your investigation, that  
15 does not include business partners such as Market Rebellion?

16 A No, it does not.

17 MAN 1: Okay, thank you.

18 THE COURT: Anybody else?

19 MS. DIVITA: This is Michelle DiVita. I have some  
20 questions as well.

21 THE COURT: I'm sorry, who was it again?

22 MS. DIVITA: Michelle DiVita.

23 THE COURT: Okay, Ms. DiVita.

24 MS. DIVITA: Sorry, take it off speakerphone.

25 THE COURT: Go ahead.

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1 the financial statements that would have independently  
2 warranted an expert beyond outside counsel or professionals  
3 already retained by the Debtor, correct?

4 A No, we did not.

5 Q And then does the Debtors' current financial advisor  
6 have experience in cryptocurrency advising and/or the  
7 banking industry?

8 A Yes, they do.

9 Q So you mentioned that the financial investigation was  
10 submitted to the statements provided by the CEO and COO. Do  
11 you mind clarifying why financial or counterparty exposure  
12 is not part of a financial review?

13 A Not sure I'm following your question. The company --  
14 we were investigating the company's practices around the  
15 loans and related activities that they were undertaking, and  
16 so we certainly obtained information from the company about  
17 the analyses that they did at the time that they made loans  
18 and decided to enter into business relationships with the  
19 parties that they entered into their relationships with. We  
20 didn't need independent financial advisors to understand  
21 what that information was that they provided to us.

22 Q Okay. So, to clarify then, you were examining the  
23 initial loan agreement, not necessarily the viability or  
24 risk management related to subsequent term sheets provided  
25 thereafter.

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1 A We were looking into whether we thought that the  
2 totality of the diligence that they performed before  
3 deciding whether to make loans to Three Arrows Capital,  
4 whether there was anything sufficiently unusual about how  
5 they went about their business that it was so widely off the  
6 mark that it would give rise to a claim that satisfied the  
7 legal requirement for a breach of fiduciary duty claim,  
8 which is very strict, very high.

9 Q Got it. So, you did or did not find a breach of  
10 fiduciary claim then related to the 3AC loan?

11 A We found that there might be a claim that has merit  
12 related to the risk management practices around that  
13 transaction, and we preserved the claim for the benefit of  
14 the estate. We limited who the estate could get money from  
15 to, number one, the \$20 million of officer and director D&O  
16 coverage and, two, we settled the exposure, the personal  
17 exposure, of Mr. Ehrlich and Mr. Psaropoulos by entering  
18 into settlements with them where they paid some money.

19 So, the claims against them are preserved, they're  
20 not released, they can be sued. And, if that lawsuit has  
21 merit, which it might, it certainly is a non-frivolous legal  
22 theory based on the facts and the law as we analyzed it in  
23 our business judgment and if the winddown estate, which is  
24 going to own the right to prosecute that litigation, they  
25 can do what they want with it. They can sue them, they can

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1 have expected.

2 Q I'm sorry, can you repeat that?

3 A Less diligence and less of the kind of diligence that  
4 we would have expected.

5 Q So what information was provided then that gave you  
6 confidence that the Debtors would heighten its standard of  
7 due diligence in its administration or management of the  
8 estate during bankruptcy?

9 A I'm sorry. I didn't hear the last part of what you  
10 said.

11 Q So what additional I guess, like, change gave you  
12 confidence that the amount of due diligence performed after  
13 3AC would not give rise to another breach of duty of care in  
14 the Debtors' management or directors' and officers'  
15 management of the Debtors' estate in bankruptcy?

16 A I still am not following your question. You analyzed  
17 specific transactions that they did to see if there's  
18 anything actionable as a result of them. They did the Three  
19 Arrows transactions between March and May of 2022, the world  
20 blew up in June, and they were in bankruptcy by July. There  
21 weren't -- right, so things happened very quickly. Those  
22 transactions weren't in 2021 or 2020; they were in March,  
23 April, and May of 2022, and this company was in bankruptcy  
24 by the time fireworks were over on July Fourth.

25 Q So I guess what additional information provided in the

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1 settle with the D&O carriers, and they can get paid either  
2 through settlement or by litigating and winning if they do  
3 from the officer and director liability carriers up to \$20  
4 million, minus however much is depleted defending the  
5 lawsuit.

6 Q Okay.

7 A And as to the individual, while they will be sued, they  
8 have already will have paid in settlement the amounts of  
9 money that I went through before.

10 Q Got it. So then was there anything unique about the  
11 3AC due diligence? It was my understanding that it was the  
12 risk management policies in general that allowed or maybe  
13 warranted this potentially colorable claims.

14 A Yeah, there were a few things about 3AC that were, I  
15 think in our judgment, a little lax relative to other  
16 counterparties. There were some things that, in our  
17 judgment -- by the way, the officers and directors wouldn't  
18 agree with this, but that's why their claims that we're  
19 preserving -- we did think that there were some specific  
20 things or the absences of some specific things around the  
21 decision to make loans to Three Arrows Capital that were  
22 different than the decisions to make loans to other parties  
23 that they made loans to, less diligence.

24 Q Was that, like -- okay.

25 A Less diligence and less of the diligence that we would

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1 special committee's report gave you confidence that, you  
2 know, things were good in March when, you know, this lax due  
3 diligence occurred that when things are, you know, under  
4 pressure, the Debtors and their directors and officers would  
5 be able to perform adequate due diligence in the  
6 administration and management of the bankruptcy proceeding?

7 A Well, again, I'm going to try my best to answer that  
8 question as I can understand it. We're not investigating  
9 generically whether or not they have risk management  
10 practices that were good. What we're investigating is  
11 whether there were transactions that they did that they  
12 shouldn't have done because their risk management practices  
13 were deficient in some way.

14 So, it's not a theory -- you have to have a thing  
15 that they did that they shouldn't have done that blew up in  
16 their face, to use a colloquialism, that you're looking  
17 into. What were the circumstances around that and as a  
18 result of what they did or didn't do in a specific area,  
19 transaction that damaged the company, whether or not you  
20 think that they breached their fiduciary duties.

21 Q Got it. So, a company that is in the business of, you  
22 know, taking customers' deposits and, you know, managing  
23 this -- we'll call it an offering or I don't know if that's  
24 the right word, but this kind of business relationship here.  
25 And you're saying that that business that could -- you were

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1 only looking at transactions rather than the business  
2 activity as a whole, correct? I just want to make sure I'm  
3 following.

4 A I think so. Again, it's hard to really understand the  
5 question, but we were not evaluating the business as a  
6 whole. We were evaluating whether anybody did anything  
7 wrong with respect to the transactions that didn't work out  
8 for the company.

9 Q Got it. So, is it normal in your (indiscernible)  
10 experience to have a single transaction take down a  
11 multibillion-dollar company?

12 A Well, having 25 percent of your assets that were on  
13 loan that you thought that you could get back any time, you  
14 know, having that suddenly not be true because you were  
15 defrauded in the context of the industry having its own  
16 macro issues, for lack of a better way to say it, those are  
17 the types of circumstances that put companies in bankruptcy  
18 in lots of industries; that's what happens. You don't just  
19 find yourself in bankruptcy. Something precipitous often  
20 happens that leads to a chain of events that puts you in a  
21 position where you end up bankrupt.

22 Q And precipitous then doesn't include the I guess  
23 counterparty or financial risk management of the Debtors,  
24 correct?

25 A I'm not sure I'm following what your question is.

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1 the filing, only the CEO and COO were identified as parties  
2 responsible for entering into this 3AC loan; is that  
3 correct?

4 A They were the decision makers and it was really  
5 predominantly the CEO.

6 Q Okay. And since your investigation didn't look into  
7 the general risk management policies, nothing, there was no  
8 red flag there that, you know, two people, only two people  
9 had decision-making authority in this matter.

10 A No, I didn't say that. That's a good question. We  
11 looked at the whole risk management process, all the people  
12 that were involved, as I said, I think much earlier now,  
13 today. We conducted a dozen interviews, not two interviews.  
14 We interviewed everybody, almost everybody in the group of  
15 people that they called the risk management committee that  
16 in some way touched the thinking around or the vetting of a  
17 potential counterparty.

18 But the way that their process worked, the buck  
19 stopped with two people and really mostly the CEO, and they  
20 were the only ones that had real authority. They were the  
21 only ones that made decisions. There were no votes taken by  
22 any larger group. There was just information provided and  
23 the terms and conditions of the actual loans that were made,  
24 as opposed to the decision that it's okay to enter into  
25 loans with the counterparty conceptually.

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1 Q So if a 25 percent, you know, of -- that's what this  
2 transaction represents of the Debtors' assets? What you're  
3 saying is that the reason that a 25 percent transaction  
4 could justify a bankruptcy filing can only occur because of  
5 some, like, outside source, not because of how the Debtor  
6 has managed its internal financial affairs to address  
7 adequately counterparty risk and loans and things like that.

8 A I don't know if I'm saying that. I'm saying that if  
9 they had loaned 25 percent of their assets to Warren  
10 Buffett, we all wouldn't be here. I'm not trying to be  
11 glib.

12 Q Got it. Okay, that's helpful.

13 A I'm trying to make the point that it's because of what  
14 happened to the counterparty that we're here. And the  
15 question is whether they should have been in business with  
16 the counterparty and the other question is whether, as they  
17 went into business with the counterparty, did they do  
18 anything so grossly unusual or inappropriate that those  
19 individuals who participated in that have personal  
20 liability; that's the question.

21 Q Okay. That actually is very helpful for me to  
22 understand, so I like your Warren Buffett example. In the  
23 case of -- I don't know how to phrase this. I'll skip that  
24 question for now.

25 So, you only identified, or I guess at least in

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1 Once the group decided, okay, we're going to do  
2 business with counterparty X, how much money to lend and on  
3 what terms was the decision, that information didn't even  
4 make it to the rest of the group that those things were  
5 decided and only decided by Mr. Ehrlich and, to a lesser  
6 degree, Mr. Psaropoulos. And that's why we believe that  
7 they are the two people against whom there are cognizable  
8 potential claims, not the other people.

9 Q Got it. So, if the CEO or COO, it sounds like they  
10 kind of really managed the counterparty exposure, financial  
11 element of this, would the estate have any claims against  
12 either of those two for making statements that were not  
13 consistent with the company's risk management policies? So  
14 maybe -- here's an example -- if an officer is representing  
15 that a company's financial exposure, counterparty exposure,  
16 is X, but in reality it's Y, the estate wouldn't have any --  
17 that's not a cause of action or is it?

18 A Well, again, you're giving me sort of a hypothetical.  
19 But again, we didn't -- we looked at all of the facts and we  
20 did not think that there was anything in those facts that  
21 gave rise to an estate, as opposed to an individual  
22 customer, an estate, a company cause of action against  
23 officers and directors.

24 Now, if an individual customer thinks that they  
25 were misled in some way, whatever that way is, and they

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1 think that they have a claim against an officer or director  
 2 for whatever they think the basis is of that claim, we  
 3 didn't investigate that and, most importantly, it's not  
 4 released under this plan. Those claims are free to be  
 5 brought.  
 6 Q Okay, and then just a few more. So, is this  
 7 profitability analysis for a director and officer conduct  
 8 claims, like, typical in bankruptcy?  
 9 A I don't even know what that means. Profitability --  
 10 Q So when you're examining the personal assets of the CEO  
 11 and COO --  
 12 A I'm sorry, now I understand.  
 13 Q -- you know, is that typical?  
 14 A I'm sorry, now I -- I think what you mean is was it  
 15 typical for us to have looked at whether -- I'll use Mr.  
 16 Ehrlich as an example. Is it typical for us to have looked  
 17 at whether -- at his personal financial situation; is that  
 18 your question?  
 19 Q Yes, exactly.  
 20 A Okay. Well, I would say -- let me rephrase your  
 21 question for you because it's a good point and we did look  
 22 at it and we looked at it for a reason. We looked at it  
 23 because we were trying to, in our business judgment, obtain  
 24 the best possible result for the estate that we could as a  
 25 legal and as a practical matter. And so, while on the one

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1 So, if you're settling with somebody -- I'm  
 2 rephrasing your question -- is it typical in a bankruptcy to  
 3 look at every individual officer and director's personal  
 4 assets? No. If you're trying to figure out what a good  
 5 settlement is from an individual, that's probably something  
 6 you want to look at, and so we did.  
 7 Q Got it. As part of that settlement analysis or I think  
 8 part of the justification of agreeing to a settlement at all  
 9 with someone who doesn't have any assets, it's this  
 10 indemnification and D&O insurance policy issue, right?  
 11 Like, those are the two kind of reasons that a settlement  
 12 was favorable in this instance?  
 13 A Yeah. I think to answer to your question is we  
 14 reasoned that the D&O policy was a bigger pool of money by a  
 15 lot than the pool of money that these individuals had. We  
 16 preserved it 100 percent, and we got from them what we  
 17 thought was a reason- -- in our judgment, in our business  
 18 judgment, that's what it was based on the facts and we  
 19 uncovered all the facts, including about what they're worth,  
 20 we thought that that was a good settlement for the benefit  
 21 of the creditors, which are really the customers. Better  
 22 than the alternative, which is not to settle with them, not  
 23 to get the money, and not be able to get anything from them  
 24 anyhow if you could win litigation that if it was brought is  
 25 going to be hard to win anyhow because the standards are

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1 hand we thought that there might be good claims against him  
 2 for the reasons I've articulated, and while it's true it's  
 3 America, anybody can sue anybody for anything, it doesn't  
 4 mean you can get something from somebody even if you win;  
 5 they have to have something to get.  
 6 So, we wanted to know what there was to get from  
 7 them so that we could figure out what would be, in light of  
 8 that, a good settlement. And so, a settlement from him for  
 9 \$10 would not have been a good settlement; he had more to  
 10 five than that. A settlement from suing him, not settling,  
 11 a settlement where you got a million dollars from him, we  
 12 thought was a good settlement because you could sue him for  
 13 \$10 million but he doesn't have \$10 million, he doesn't have  
 14 \$5 million.  
 15 So, we were trying to assess, doing the best that  
 16 we could -- we didn't have any reason to want to do anything  
 17 other than that -- we didn't have to settle with him. We  
 18 thought it was a good idea to settle with him on the terms  
 19 that we settled for in part because we looked at what does  
 20 he have to give and it wasn't very much. So, we got, in  
 21 relation to that, what we thought was a reasonable and a  
 22 fair amount, better than getting nothing from him,  
 23 especially when coupled with we didn't actually have to  
 24 release him so that we could go after the \$20 million pool  
 25 of money that's potentially available from the D&O carrier.

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1 tough.  
 2 Q Yeah. So then for this D&O insurance piece, especially  
 3 a Side A policy, the premium, that's a risk calculation,  
 4 right? It sounds like the premium on that Side A policy was  
 5 \$10 million and then the payout max -- I don't know if it's  
 6 a maximum -- was also \$10 million, correct?  
 7 A We didn't make any -- we didn't write the policy.  
 8 We're not the insurers. I'm not sure I know what your  
 9 question is. Insurance companies --  
 10 Q Did you review the policy?  
 11 A -- decide what they'll charge for the coverage that  
 12 they offer.  
 13 Q Correct. And so, insurance companies, they're charging  
 14 for risk, correct? That's my understanding.  
 15 A Well, I don't know what goes into their calculation. I  
 16 mean, conceptually, that's what they're doing, but it's not  
 17 a simple business.  
 18 Q Oh, I'm well aware. So, this would at least imply that  
 19 the person it's insuring is risky enough to justify a 100  
 20 percent premium amount. Is that a reasonable statement to  
 21 you?  
 22 A No, I really don't know what they were thinking.  
 23 Q I mean, because the insurers are probably coming out  
 24 ahead of you if there isn't much risk if your premium is 100  
 25 percent the policy amount. I think you previously mentioned

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1 that, you know, it was counsel's recommendation to enter  
2 into this policy. But in terms of, like, special or  
3 investigation, there wasn't any additional, you know,  
4 inquiry into why this amount equaled the payout. Like, it's  
5 a weird insurance term, right? You don't buy insurance for  
6 the same amount or you pay a premium for the same amount a  
7 policy is. So, I guess clarifying that there was not any  
8 additional investigation there, right, into why the CEO  
9 or...

10 A Well, again, the investigation was -- investigation is  
11 a strange word for that. We understand what the facts were.  
12 We preserved the ability to go try to get that money back  
13 from the only party that has the ability to pay that money  
14 back and we thought it was important to preserve that. We  
15 found that. Nobody came to us and said, hey, good idea,  
16 don't you want to make sure we can go after the insurance  
17 policy, you know, on a fraudulent conveyance claim for the  
18 \$10 million because something seems odd, you know, all this  
19 money was paid for that much coverage.

20 We flagged that issue because we uncovered it --  
21 not uncovered, no one was hiding it from us. We read all  
22 the documents, we asked for information, we talked to  
23 people, and we said, just like you just said, huh, that  
24 seems unusual. We're not going to let that just go away.  
25 We're going to make sure that it gets preserved so that it

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MS. DIVITA: Yes.

2 THE WITNESS: I'm sorry, ask me that -- what are  
3 you asking me? That's just because it's hard to hear.

BY MS. DIVITA:

5 Q Oh, sorry. They were an insider based on the number of  
6 shares they held shortly before bankruptcy and the canceled  
7 a certain subset of those shares and no longer, I think at  
8 least Canadian public filing standards, qualified as an  
9 insider shareholder. Is there a reason that Alameda, who  
10 was a shareholder -- or I'm sorry -- insider shortly before  
11 bankruptcy was not included in the investigation of other  
12 insiders?

13 A Yeah. I mean, whether they're an insider or not, I'm  
14 not 100 percent sure. But assuming that they are, it never  
15 occurred to us that they would ever be released, so we  
16 didn't need to investigate them; there's no release for  
17 Alameda. We were investigating officers and directors  
18 because of the possibility that releases would be proposed  
19 and we would be asked about whether or not we thought that  
20 was appropriate. There was never any idea that Alameda  
21 would be released from anything, so there was nothing to  
22 investigate. The estate can sue Alameda until the cows come  
23 home if they want to.

MS. DIVITA: Okay, that's all I have. Thank you.

THE COURT: Okay.

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1 could potentially be unwound if legally there's a basis to  
2 do that, and we suspect that there might be.

3 Now, sure, the insurance company doesn't think so,  
4 and I'm sure other people don't think so, but we've  
5 preserved it. We didn't litigate it to conclusion, we  
6 didn't let it go; we preserved it. I would preserve it for  
7 the same -- based on the same observation that you are  
8 making.

9 Q Okay. So, did you identify any colorable claim from  
10 the D&O insurer that may justify avoiding paying out any  
11 insurance claims?

12 A Are you asking me whether we think that the D&O carrier  
13 has any basis to deny coverage; is that what you're asking  
14 me?

15 Q Correct, yes.

16 A I don't. I'm not aware of any, but it wasn't -- we  
17 certainly investigate that, but nothing that we did  
18 investigate stands out as a red flag.

19 Q Got it. One more question. Alameda was an insider  
20 shortly before it canceled shares I think a few weeks, maybe  
21 a few days leading up to bankruptcy. Is there a reason they  
22 were excluded from the investigation as insiders?

23 A I don't understand your question. Who is --

24 Q So Alameda --

25 THE COURT: Who? Oh, Alameda.

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1 ANDRE: I'm sorry, Your Honor. I have some  
2 questions too.

THE COURT: Who is that?

4 ANDRE: This is Andre (indiscernible), pro se  
5 creditor.

THE COURT: Okay.

CROSS-EXAMINATION OF TIMOTHY POHL

BY ANDRE:

9 Q Okay. Mr. Pohl, your committee was basically tasked to  
10 investigate the company's policies to see if they did their  
11 -- investigate the company's practices on their due  
12 diligence. In your opinion, did they perform sufficient due  
13 diligence against 3AC?

14 A No.

15 Q And what would -- why not?

16 A Well, I think they did conduct some due diligence.  
17 They had a process. They did have a series of phone calls.  
18 They asked for certain information and they got some of the  
19 information they asked for, but not all of it. They were  
20 aware importantly that there was another company that was  
21 making loans to 3AC that was known to have a very rigorous  
22 due diligence process of their own, so they took comfort in  
23 the fact that --

24 ANDRE: I'm sorry. There's some background noise.  
25 I can't hear you.

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THE COURT: Somebody else has got an open telephone line; they need to mute it.

THE WITNESS: Okay. So, they got a whole bunch of different kinds of information in different ways. They conducted interviews. They asked for certain information. They got some public information. They had knowledge of other companies --

BY ANDRE:

Q Did they investigate the --

A Can I --

Q I'm sorry. Did they investigate the company's books?

A That's what I'm -- let me answer --

THE COURT: Who is speaking? Who asked that question?

ANDRE: I'm sorry.

THE COURT: Who asked that question?

ANDRE: Oh, I did. Andre (indiscernible).

THE COURT: Okay. You got to let the witness finish. You can't interrupt him.

THE WITNESS: So, they did a whole number of things, including asking for financial statements from Three Arrows. They did not get financial statements from Three Arrows in the conventional sense. They got a very short what's called an NAV statement, it was signed, that said from Three Arrows that they had a net asset value in the

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They had a series of interviews. They looked at -- let me finish.

Q Series of phone calls with who?

A People at --

Q Be more specific please.

A People at Three Arrows, including one of the two founders.

Q Okay.

A So they conducted interviews. They looked at the documents that they were provided. They looked at public information. They knew that --

Q What documents were those?

A They knew that there were other people doing business that had their own rigorous -- their own due diligence processes which were believed to be rigorous. Three Arrows Capital at the time they did business with them was a marketplace darling, much like Alameda. There was -- we weren't the only -- Voyager wasn't the only company doing business with Three Arrows, just the opposite. All of those things in total combined was the diligence they did. They did that diligence over a roughly a one-month period.

Q This is, like, more like pseudo due diligence because at the very least, they didn't look at the company's books, they didn't look at their financial statements. They didn't ensure that they were capitalized.

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multiple, multiple billions of dollars. That was part of the group of things that they relied upon, not the only thing, but it was part of it. It was not very robust. We did not think that that was very sufficient. That was one of the things that we thought was deficient.

But it wasn't the only thing that they relied upon, so we can't sort of point only to one factor. We reviewed what they did, what they looked at, and we did not think that it was as robust as it should have been. And that's why we did not believe that -- that's why we did believe and do believe that there are potential claims for violation of the duty of care against the two individuals that ultimately decided to make those loans anyhow.

Now it's not a clearcut winner. They did do some due diligence. Other people were doing business. It's not even clear that, even if they had done better -- in my view, better due diligence, that the answer would have been any different. They were defrauded. They were defrauded, they were being lied to.

BY ANDRE:

Q Yes, I'm sorry. So, what other due diligence did they do then?

A I just described it.

Q Exactly, like, what other?

A I just described it. They had a series of phone calls.

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A They did -- all I can say is they did the diligence they did and we did not find that the result of that diligence was so robust that there was no potential claim. That's why we preserve the claims and entered into the settlements that we did.

Q And you believe that that was after the risk management...

A I think I just said the opposite.

Q Okay. Well, that's what I'm actually getting to, is that you have a company here that has, let's just say, 1.3 billion in assets that are ready and willing to lend out half of their business to another party because they told them we have 3.7 billion of net assets that you can go in with, you can do business with us. What I'm trying to get here is that I think this is just more than, oh yeah, we found some negligence. We found that, you know, they didn't really the do less diligence; they didn't do any diligence, yeah?

A What's the question?

Q Is that the -- that's the question. It sounds like they didn't do any diligence and you're saying they did some diligence.

A I just described the diligence.

Q And the --

A I just described the diligence.

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1 Q Right. But ultimately, these actions caused the  
2 downfall of the entire company. In one month, it caused 3.5  
3 million customers, you know -- all right, I'm going to move  
4 on from that.

5 What was Stephen Ehrlich's net worth or what did  
6 Stephen Ehrlich have? You said, oh, he didn't have much.  
7 What did he have?

8 A I'm a little handicapped by confidentiality agreement,  
9 so I'll try to answer it, again, the way I answered it  
10 before. He has a house; he has some money in a retirement  
11 account and he had some money in a bank account. Can I --

12 Q This is Stephen Ehrlich's?

13 A Yes. I'm answering your question, yes.

14 Q Okay.

15 A The house, he had some money in a retirement account,  
16 and he had some money in a bank account. The lion's share  
17 of the money in the bank account he's giving back to us.  
18 The retirement account was smaller and the value of the  
19 house I think is smaller too. It's right around the same.  
20 I can't remember the exact...

21 Q And that --

22 A So we did not take his house. If we had insisted on  
23 taking his house and his IRA, there would have been no  
24 settlement because he would not have agreed to it.

25 Q Okay. And what did you recover from Mr. Ehrlich?

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1 of time, did you consider whether these individuals lived in  
2 community property states, such that their wives assets  
3 might be available to satisfy a judgment against them  
4 because there was references to that earlier too.

5 THE WITNESS: So, let me start with him and then  
6 I'll go to his community property so that it's clear. Try  
7 it again, maybe I wasn't clear. I think you can think about  
8 what he has in three buckets: he has a house, that's one  
9 bucket; he has some money in an retirement account, that's  
10 the second bucket; and then he had some money in his bank  
11 account.

12 We have most of the money from his bank account  
13 coming back to us, the estate. We did not get his house and  
14 we did not get his retirement account. If we had insisted  
15 on either of those two things, there would be no settlement  
16 and we would not have had the \$1.125 million.

17 With respect to his wife -- with respect to his  
18 wife, his wife has assets. We looked at legally whether or  
19 not if he were sued, would there be an ability to get at his  
20 wife's assets, and the legal answer in the state that he  
21 lives in or that she lives in is no, there is no legal  
22 recourse to her assets. So, it may be the amount of her  
23 assets are not relevant because there's no way to get to  
24 them. We looked.

25 BY ANDRE:

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1 A \$1.25 or \$1.125, one of those two numbers, \$1.125  
2 million plus, to the extent that as a result of giving us  
3 that money, he is entitled to a refund from the IRS, which  
4 he might be, we get that also.

5 Q Okay. And then from Mr. Psaropoulos, what -- again, so  
6 can you answer, does Stephen Ehrlich have a network of more  
7 than 5 million?

8 A No.

9 Q No, you can't answer or no, he doesn't.

10 A No, he doesn't.

11 Q Does he have a net worth of more than a million?

12 MR. KIRPALANI: I'm just going to object, Your  
13 Honor, on the basis of confidentiality and I don't want my  
14 witness to be sued for violating a confidentiality  
15 agreement. I think he's answered the questions about this  
16 and the scope of the assets.

17 THE COURT: Is there anything else?

18 ANDRE: I'm trying to --

19 THE COURT: Is there anything else you can say  
20 about the range of Mr. Ehrlich's net worth within the limits  
21 of your confidentiality agreement? I presume it was over a  
22 million or he wouldn't have paid a million.

23 MR. KIRPALANI: Yes. I think you can -- I think  
24 you've tried, but please, Mr. Pohl. And please also answer  
25 because it was referred to earlier and just in the interest

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1 Q And that they would be Connecticut?

2 A I think he's Connecticut, right. I might confuse  
3 between the two of them who lives where, but one of them is  
4 Connecticut, and that was legally --

5 Q And the house is -- and this house of his is in  
6 Greenwich?

7 A I don't know where his house is.

8 MR. KIRPALANI: Your Honor, I'm advised -- sorry  
9 to interrupt the question, but if I could just try to  
10 clarify something -- advised by counsel to the creditors'  
11 committee that filed on the Docket 112-1 was the committee's  
12 own report where it was disclosed that Mr. Ehrlich reported  
13 his net worth as approximately \$2.57 million. Mr.  
14 Psaropoulos declined to allow his net worth to be disclosed,  
15 so that's the number.

16 THE WITNESS: Okay. I didn't know that. I knew  
17 what the number was; I didn't know it had been disclosed.  
18 So, I think you can see that we did settle with him for a  
19 very significant percentage of his net worth and,  
20 importantly, the net worth of his that we did not obtain is  
21 not the same; it's in different categories, it's a house and  
22 it's a retirement account.

23 ANDRE: I'm sorry (indiscernible). Say it again.

24 THE WITNESS: I didn't understand --

25 ANDRE: Can you hear me?

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THE WITNESS: Yeah. Say that again please?

ANDRE: Just saying I got dropped from the call, so I'm letting you know that I'm back on.

THE COURT: Oh, all right. Well, I don't know if you were on, but Mr. Kirpalani pointed out that it's been previously revealed in a filing on the docket that Mr. Ehrlich's reported net worth was \$2.75 million.

MR. KIRPALANI: \$2.57.

THE COURT: \$2.57, excuse me. I'm getting dyslexic as I get tired. And that the witness then said he believed that they had settled for a significant percentage of the total net worth and for most of the cash that was had and that he considered it a good settlement in light of the fact that he couldn't get at -- or unlikely to get at the house and the IRA.

THE WITNESS: Okay. I also said that we did look at his wife's assets. We were trying to -- we were looking to get everything that we could reasonably get, and we concluded based on legal advice that we would be unable to get to his wife's assets. If someone didn't settle and sued and won -- a lot of ifs there -- but if you didn't settle and you sued and you won, could you get at her assets? No, you couldn't.

BY ANDRE:

Q Right, okay. I don't want to deflect too much from the

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don't want to be misconstrued. The fact that there may be claims against them is not the same thing as saying that those are slam dunk winners; they're not slam dunk winners, legally, they are not slam dunk winners. There's a lot of uncertainty about whether you could sue them and succeed, and so, that had to be factored into account.

And our goal wasn't to make them poor. The goal was to get the most for the estate that we reasonably could under the circumstances and that's what we did.

Q Well, by my comment of making them poor, I mean taking everything they have from them and putting it into the estate so that all the other creditors can at least get a little bit more. And, quite frankly, I mean, they should have nothing after their decision.

One last question. If you do not opt in --

THE COURT: Did you look at exemptions available under Connecticut law?

THE WITNESS: You mean on the marital property, Your Honor?

THE COURT: On the house and on the IRA or in the event that Mr. Ehrlich declared his own bankruptcy?

THE WITNESS: No. We were really focused on her property because it was more. And when we -- the house and the IRA, again, those amounts are smaller even comb -- you know, were not as significant as the cash. So, you know, in

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main course here. What were the -- how much did you recover from Mr. Psaropoulos?

A Much less. Mr. Psaropoulos is subordinating his right to 50 percent of his crypto assets, but not in the Voyager--

Q Right, okay.

A So the value is about, at the time that we calculated it -- and I know the price is moved every day, but the day that we calculated it, it's worth about \$60,000; it's not nearly as much. His net worth is significantly less, number one, and number two, he was not as culpable. We thought the claims against him were weaker because it was really Mr. Ehrlich who was the decider with respect to making the loans to Three Arrows and in what amounts, so the strength of the claims wasn't the same.

Q So if I can just synthesize this correctly. Stephen Ehrlich's and Evan Psaropoulos, the main culprits in decision making, you know, with regard to the loan to Three Arrows, which ultimately brought down the company and caused a lot of harm to all of Voyager's customers. And your committee, instead of going after everything that they had and basically potentially making them poor, you agreed to settle on a smaller amount because maybe that was better than getting nothing. Does that sound about right?

A No, I wouldn't describe it that way. I think we thought that it was better than not settling. Again, I

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negotiating, when we could get the cash and get almost all of the cash, we thought relative it was total assets that was a fair deal compared to not settling at all and suing them and maybe getting nothing.

And we knew that -- no, we just didn't know, it was a settlement, it was a negotiations, but that he was not going to agree to give up his house and his IRA. Fortunately, the values of those things was not so significant that it made just getting at the cash not a good deal, all in. It made it a good deal. It was still a good deal all in.

BY ANDRE:

Q Okay. I have actually two more questions. One was if you do not opt-in to the finance deal, then you -- or rather, if you do opt-in to the finance deal, then you basically give up any rights to sue Mr. Ehrlich, yeah?

MR. KIRPALANI: Objection. Exceeds the scope of direct. But if you understand, if you know the answer to this question.

THE WITNESS: Are you asking me about under the plan if somebody opts-in to the finance, if they keep their asset --

BY ANDRE:

Q Right, they give up their rights to sue?

A If they keep their asset on the finance --

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THE COURT: No. My understanding is if you voted in favor of the plan or if you executed an affirmative opt-in to the releases, you would --

THE WITNESS: Just an affirmative opt-in, even for people who voted yes?

THE COURT: I thought you were binding people who voted -- so people who voted for the plan are not bound by the releases, okay.

THE WITNESS: Of the individual claims.

THE COURT: Okay. It's just they're only -- okay, so the only people who have released claims are people who have affirmatively opted in. That's people who checked the opt-in box on a ballot, not people who elect to become finance customers.

BY ANDRE:

Q So on the Voyager app, when it asks you do you want to transfer your data now and opt-in, that has nothing to do with giving up your rights to sue them personally or does that?

A That's correct.

ANDRE: Okay. I don't have any more questions. Thank you.

THE COURT: Okay. Anybody else on the phone?

MS. DIRESTA: Hi, Your Honor. This is Gina DiResta again, and I have a question for the witness.

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of rumors about it, is there a way to investigate that after the fact? I know you guys have already done your investigation, but is there a way to do that now?

A I don't think we would be investigating social media rumors, but...

MS. DIRESTA: Okay, thank you. That's all.

THE COURT: Okay.

MR. LOREN: Your Honor, this is John Loren, pro se day creditor. Can you hear me?

THE COURT: I can.

CROSS-EXAMINATION OF TIMOTHY POHL

BY MR. LOREN:

Q For the witness, I was curious if you investigated any of Steve's, like, shell companies, holdings, and/or trusts?

A Well, we requested and received sworn statements where he was required to disclose to us all of his assets and then he was deposed, so he would have been required to disclose those things to us and there was no disclosure of any other assets other than the ones we've talked about.

Q So if Steve Ehrlich votes, owns, or has a participation in shell companies, holdings, or trusts and he told he that he didn't, that's something we can potentially investigate. Am I hearing that correctly?

A I guess. If you're asking what the legal ramifications are of it were to turn out that he lied in his sworn

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THE COURT: Okay.

CROSS-EXAMINATION OF TIMOTHY POHL

BY MS. DIRESTA:

Q Hi, Mr. Pohl. I heard a bunch of rumors that Voyager employees and even some of the customers were supposedly tipped off that the Voyager platform was going to get shut down and told to take their assets off the platform before it got shut down. Did you do any kind of investigations along these lines?

A I am not aware that we saw anything consistent with that.

Q Did you hear any kind of rumors around those lines at least?

A No, I'm not -- I for sure did not hear any rumors and no one else has told me that they heard those rumors either.

Q Okay. Because it's actually, like, a lot of people say it and, like, then, you know, it doesn't necessarily mean it's true, but a lot of people have been spreading that on different social media platforms. So, I didn't know if it's something that -- I'm surprised you haven't heard of it just because it's, like, rampant out there, and then I wanted to know if you guys did any kind of investigation along those lines.

And since you guys didn't do any investigations and I just now got to your attention that there were a lot

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testimony to us, I'll defer to the lawyer to answer that question, but I'm sure there would be some.

Q Wonderful, okay. And then there's a new article that came out, basically there's a new fund coming out in Tampa, Florida, and Steve Ehrlich is actually one of the employees or, I guess, one of the partners in this fund; it's called Druid. Have you heard anything about this?

A I have not.

MR. LOREN: Okay. That's all I have. Thank you.

THE COURT: Okay. Anybody else? Okay.

MAN 3: Your Honor, could I (indiscernible), one of the creditors (indiscernible) because I'm not in this because I came in a bit late.

CROSS-EXAMINATION OF TIMOTHY POHL

BY MAN 3:

Q (Indiscernible). What is the timeframe out and do we know the limits; is that a weekly limit of withdrawals from the balance (indiscernible) implementing to distribute daily without leaving the market to suffer? How is that (indiscernible); is that two-month timetable so it fully distribute or a shorter timeframe?

THE COURT: Okay. That's not an appropriate question at this time. We're in the middle of taking evidence, so the issue is whether you have a question about the subject of this witness's testimony. We'll be resuming

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1 tomorrow and you can get clarification of your issues then.  
 2 In fact, you could probably also talk to the Debtors  
 3 overnight and get a clarification. Okay?

4 MAN 3: Thank you.

5 THE COURT: Anybody else with questions for this  
 6 witness? All right, the witness is excused and we'll  
 7 adjourn for the evening. We'll resume tomorrow at 10:00.

8 MAN 4: (Indiscernible), Your Honor?

9 THE COURT: Yes. Did you have questions for the  
 10 witness?

11 MAN 4: No.

12 THE COURT: Okay. Yes.

13 MR. UPTEGROVE: William Uptegrove on behalf of the  
 14 United States Securities and Exchange Commission. Your  
 15 Honor, today's hearing went longer than we anticipated and  
 16 neither Miss Scheuer or I made accommodations for tonight  
 17 and we have travel arrangements back out of state. We'd  
 18 like to request to participate in tomorrow's hearing through  
 19 Court Solutions.

20 THE COURT: All right. I'll grant that request.

21 MR. UPTEGROVE: And just one --

22 THE COURT: You have no evidence to offer, right?

23 MR. UPTEGROVE: No, Your Honor. And just one  
 24 other logistical point is that we should be able to make --  
 25 just to confirm, we should be able to make same day Court

## I N D E X

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1 Solution arrangements tomorrow?

2 THE COURT: I sure understand you can, and if you  
 3 have any difficulties, speak to our chamber staff and I'm  
 4 sure we can give you the assistance you need. Thank you.

5 All right, we'll see everybody tomorrow.

6 (Whereupon these proceedings were concluded at  
 7 6:53 PM)

## C E R T I F I C A T I O N

1 I, Sonya Ledanski Hyde, certified that the foregoing  
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Sonya M. Ledanski Hyde  
 Sonya Ledanski Hyde

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 Date: March 6, 2023

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[bought - capable]

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[chance - clarification]

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[pendency - personally]

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[personally - platform]

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[presume - profitability]

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[really - recourse]

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[way - witness]

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1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Case No. 22-10943-mew  
4 - - - - - x  
5 In the Matter of:  
6 VOYAGER DIGITAL HOLDINGS,  
7 Debtor.  
8 - - - - - x  
9 Adv. Case No. 22-01133-mew  
10 - - - - - x  
11 VOYAGER DIGITAL HOLDINGS, INC.,  
12 Plaintiff,  
13 v.  
14 DESOUSA,  
15 Defendant.  
16 - - - - - x  
17 Adv. Case No. 22-01170-mew  
18 - - - - - x  
19 THE AD HOC GROUP OF EQUITY INTEREST HOLDERS OF VOYAGER OF  
20 VOYAGER DIGITAL LTD.,  
21 Plaintiff,  
22 v.  
23 VOYAGER DIGITAL HOLDINGS, INC., et al.,  
24 Defendants.  
25 - - - - - x

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United States Bankruptcy Court  
One Bowling Green  
New York, NY 10004

March 3, 2023  
10:08 AM

B E F O R E :  
HON MICHAEL E. WILES  
U.S. BANKRUPTCY JUDGE  
ECRO: F. FERGUSON

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HEARING re Motion by Tracy Hendershott to convert case to  
chapter 7

Objection filed

HEARING re Motions by Alah Shehadeh  
Objection filed

HEARING re Objection of the Official Committee of Unsecured  
Creditors to proofs of claim nos. 11206, 11209 and 11213

HEARING re Combined hearing RE: to consider approval of the  
disclosure statement and confirmation of the chapter 11 plan  
Objections filed

Transcribed by: Sonya Ledanski Hyde

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HEARING re Adversary proceeding: 22-01133-mew Voyager  
Digital Holdings, Inc. v. De Sousa Motion to extend  
automatic stay or, in the alternative, for injunctive relief  
enjoining prosecution of certain pending litigation against  
the debtors, directors and officers

HEARING re Adversary proceeding: 22-01170-mew The Ad Hoc  
Group of Equity Interest Holders of Voy v. Voyager Digital  
Holdings, Inc. et al  
Pre-trial Conference

HEARING re Motion to hold the directors personally liable

HEARING re Joinder to motion by David Stephenson

HEARING re Motion for an equity committee

HEARING re Joinder to motion by David Stephenson

HEARING re Motion by Michelle D. DiVita to appoint a chapter  
11 trustee  
Objections filed

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## I N D E X

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BRIAN TICHENOR	24	41/99/111		
		115/146		

PAUL HAGE	233	247		
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## P R O C E E D I N G S

THE COURT: Please be seated. All right, are we ready to continue?

MR. SLADE: Yes, Your Honor.

THE COURT: Let me just log into my computer screen. We'll be all set.

MR. SLADE: Sure.

THE COURT: Okay. Can I ask a question about the evidentiary presentations?

MR. SLADE: Certainly.

THE COURT: A number of the objections have criticized the selection of the proposed plan administrator. Do you have any witnesses who are going to address that?

MR. SLADE: We do intend to introduce his resume into evidence, and that was one of the things I was going to cover right now.

THE COURT: All right. And do you anticipate any testimony from anybody from Binance?

MR. SLADE: We do not.

THE COURT: So --

MR. SLADE: We have asked them to provide a witness, and they declined.

THE COURT: That seems odd, doesn't it?

MR. SLADE: Not in my experience, Your Honor. I mean, I've done a lot of these where the buyer, we ask the

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1 buyer to testify and the buyer declines to testify. So in  
2 that respect -- I mean, this is an unusual case which is why  
3 we made the request, but I understand the question. We  
4 asked it as well.

5 THE COURT: Well, I have a host of objections  
6 asking me, based on what's happened in the industry in  
7 general, to try to be careful about Binance and about how it  
8 treats customers and how it segregates customer payments,  
9 and essentially you're asking me to rely entirely on unsworn  
10 hearsay on those points.

11 MR. SLADE: We are going to -- Mr. Tichenor is  
12 going to testify about the additional diligence that we did  
13 and --

14 THE COURT: But in the end, his diligence is  
15 largely hearsay, right? It's what Binance tells him.

16 MR. SLADE: Is it largely hearsay. We have some  
17 evidence, some of which was provided confidentially that I  
18 would want to confirm that I'm allowed to disclose.

19 THE COURT: Yeah.

20 MR. SLADE: But I understand Your Honor's  
21 questions and concerns and we are asking the same questions.

22 THE COURT: Okay. I had mentioned yesterday, and  
23 these are things for you to discuss with Binance because  
24 they're things I'm thinking about and maybe there are issues  
25 that are easy modifications that would make points go away,

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1 distributions and don't want to be Binance customers, why do  
2 they have to wait six months? Why can't they get the same  
3 three-month treatment that people in other states get?

4 MR. GOLDBERG: Well, Your Honor, essentially the  
5 business deal that was struck between Binance and the Debtor  
6 --

7 THE COURT: I don't care what the business deal  
8 is. From the bankruptcy point of view, why can't they have  
9 the same terms as people in other states? Why, just because  
10 I live in Texas, if I am absolutely sure that I don't want  
11 to be a Binance customer, why can't I do the same thing as  
12 somebody who's in Ohio and just get cashed out in three  
13 months? Why do I have to wait six months?

14 MR. GOLDBERG: The objective with that provision,  
15 Your Honor, is to attempt to reach a solution that complies  
16 with applicable regulations to permit distributions in kind,  
17 which is the goal of creditors.

18 THE COURT: But if I don't want an in-kind  
19 distribution, I live in Texas and I say I'd rather get my  
20 cash in three months, I don't want in-kind distributions,  
21 why do I have to wait six months?

22 MR. GOLDBERG: Well, Your Honor, the -- Binance's  
23 transactions to acquire all of the customers onto the  
24 platform and serve as distribution agent to --

25 THE COURT: But you know you're not acquiring all

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1 but I had mentioned the length of the custody trust  
2 relationship to make sure that it continues until somebody's  
3 had an actual meaningful opportunity to withdraw their  
4 crypto, if that's what they choose to do.

5 I'm still unclear in the unsupported  
6 jurisdictions, if somebody does not want to be a Binance  
7 customer, do they have to wait six months or can they get  
8 cash in three months like people in other states can get?

9 MR. GOLDBERG: Your Honor, Adam Goldberg of Latham  
10 and Watkins on behalf of Binance.US. The terms of the deal  
11 are that customers in unsupported jurisdictions would be --  
12 their cryptocurrency would be held by the Debtors for six  
13 months from the closing date until there is a solution with  
14 any of the unsupported jurisdictions. As I think Your Honor  
15 is aware, Binance.US, the Debtors, and the State of Vermont  
16 have reached an agreement on the terms of distributions to  
17 Vermonters and we're working earnestly to achieve similar  
18 resolutions with other unsupported jurisdictions and I'm  
19 hopeful we'll be able to do so.

20 THE COURT: I understand the reasons why the  
21 parties say that as to people who want crypto in-kind  
22 distributions, why you can't do it in violation of law, why  
23 you want six months try to work it out. I understand all  
24 that. But as to people in the unsupported jurisdictions, if  
25 I'm using the correct phrase here, who don't want in-kind

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1 of the customers in Ohio. You know, those people don't have  
2 to go to Binance. They have a right to just be cashed out  
3 in three months if that's what they want. So if I'm in  
4 Texas and I similarly don't want to be a Binance customer,  
5 why don't I get the exact same opportunity? I don't  
6 understand it.

7 MR. GOLDBERG: Essentially the goal there was to  
8 align the terms for all other customers which was to provide  
9 custom -- Binance with the ability to acquire all of the  
10 customers and deliver the crypto to customers as quickly as  
11 possible for those who want to be part of the Binance  
12 platform. That transaction enabled the Debtors to receive  
13 the maximum amount of value available for Binance to benefit  
14 the estate as a whole and --

15 THE COURT: You know -- but look. I understand  
16 that you want to give everybody a chance to get in-kind  
17 distributions. I understand that you want on behalf of  
18 Binance to get customers if you can. But obviously, we  
19 can't force customers to go to you. And as to customers in  
20 48 states, you have recognized that they don't have to open  
21 Binance accounts and if they don't, within three months,  
22 that they get cash distributions.

23 My question is, why can't somebody in Texas, New  
24 York, Vermont, Hawaii, whatever your unsupported  
25 jurisdictions still are, why can't they say in that same

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three-month period, I don't want to go to Binance? This -- you know, why do you get longer to try to convince them to be Binance customers than you get with respect to people in Ohio? Don't get it.

MR. GOLDBERG: Well --

THE COURT: Why can't they have the affirmative right to tell you, I don't want this, I want my cash, so that I can have -- so that I can have the same rights that somebody in Ohio has? I can't give them the same rights to in-kind distributions because there are state laws in effect. I understand that. I can give them the same right to get cash distributions as the same time as people in other states have and I'm having a lot of trouble understanding why I'm not -- why I shouldn't do that, in fact, why I'm not required to do that.

MR. GOLDBERG: I understand Your Honor's point. I think our position there is, Your Honor, that the creditors do have the same opportunity to recover value from the estate as quickly as possible in accordance with applicable law and that part of the value proposition that is benefiting the estate and that was voted on by creditors, is to provide that opportunity for Binance, the Debtors, and each of the unsupported jurisdictions to seek to achieve a resolution that enables distributions to customers within that time period. And once the resolutions occur, as was

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hard?

WOMAN 1: Your Honor, we just got a notification that people on the phone can't hear.

THE COURT: My microphone is supposedly on, I think. Can anybody hear me now?

MAN 1: We have the same as you, Your Honor. (indiscernible) the whole Court Solutions system is not -- is down.

THE COURT: Is down?

MAN 1: For this hearing. (indiscernible) certain hearings (indiscernible).

THE COURT: I see. So it's not this microphone. It's Court Solutions. Great. I don't want to have to repeat all that.

MR. GOLDBERG: I hear you loud and clear, Your Honor.

MAN 1: (indiscernible).

THE COURT: Yeah, would you -- thanks.

AUTOMATED VOICE: Thank you. Your personal identification number has been accepted. Welcome to your telephonic courtroom. Your line is live. To access the Court Solutions advanced call features, go to Court-Solutions.com and open the hearing dashboard. You are entering the courtroom.

THE COURT: I apologize for those who were

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the case with Vermont, the -- those states will no longer be considered a unsupported jurisdiction.

THE COURT: That's fine. And I have no problem with your trying to work that out, but you may not be able to work it out. You've got, at least New York seems to be an obstacle for you. So my -- I'm left with this problem, right, that I understand all your explanations about how you can't change the past. You can't give yourself a regulatory approval that you don't have. You can't distribute crypto in kind in New York like you can elsewhere because New York says you can't.

I understand all that, but none of that explains why you can't give New York customers the same right to a cash distribution in three months as you give to people in other states. There's no explanation for that other than, I suppose, your desire to market Binance to people in New York. But why people in New York then have to take an extra three months than people in Ohio if they don't want to go to Binance is a mystery to me.

It's easily solvable. All you have to say is that people -- customers can tell you if they elect not to go to Binance. You don't have to wait this three months. They should be able to just make an election not to go to Binance and if they do that, they get their cash distribution in the three-month period that you've specified. Why is that so

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unknowingly to me kind of bounced off the call here with the Court Solutions connection going down. I don't know how much you heard and didn't hear. Does anybody here have any idea when the connection stopped?

WOMAN 1: We lost four minutes and 20 seconds.

THE COURT: Thanks. Okay. Unfortunately, I can't rewind in my head that precise amount of time. I was asking some questions about the evidence that's going to come in today. You probably heard that. And then I was identifying -- in the process of identifying three issues that I would like the Debtors to be discussing with Binance because they seem to me to be relatively small changes in the arrangements here that might go a long way to eliminating some of the objections.

The first was that I have previously said in the order approving the Binance agreement that any assets transferred to Binance were absolutely held by Binance nominally only and were held in trust and in custody for either the Debtors or the customers until the distributions were completed. I had said that in the order that we entered that approved the Binance transactions subject to this hearing.

But I also yesterday indicated that it seemed to me that maybe we ought to make clear that that custody provision continues for -- I'll let people tell me -- a

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reasonable time so that we don't find that we've sort of had it end instantaneously upon the crediting to a customer's account so that if somebody actually wants to make a withdrawal, which was the whole point, somebody wants to actually make a withdrawal without having subjected themselves to undue risk, they can actually do so.

Doesn't have to be a real long period of time, but it shouldn't be a second and it shouldn't be a minute. It should be something that's meaningful so that people can actually act to get what they want within this time period that this custody and trust provision applies.

Another issue I was raising here is that I still will hear argument of course, from the states and the unsupported jurisdictions about whether there is unfair discrimination, but I do understand at least the contrary argument that as to in-kind distributions, we can't change the past. We can't undo the failure to have regulatory approvals and we can't do what regulations in different jurisdictions do not allow us to do.

And you know, the only way to have equal treatment as a result of that is to make 48 states wait just because we can't do everything in all 52 states, which seems like a not very perfect solution. But at the same time, it seems to me that the whole program is set up so that people in 48 states who do not want to be Binance customers get cashed

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But do you need to transfer all information that you have about a customer, all of the know your customer and other data you have, bank account records and whatever information it amounts to, do you need to transfer all of that up front? Isn't it easy, relatively, to modify this so that that information, other than the contact information, only gets transferred when the customer elects to be a Binance customer?

Is there any reason why Binance needs all of that other information for people who don't elect to be Binance customers? Isn't it a little safer and better protection for those customers if we do the transfer of that kind of data in stages and in pieces? I'm not asking you to give me a definitive answer. I'm just suggesting to you that these are things that seem relatively easy to change to me. They may not be as perfect as you would like, but they don't really seem to me to have an impact on your business deal and they'll go a long way towards addressing a lot of the concerns that people have expressed. Okay?

MR. GOLDBERG: Thank you, Your Honor. I hear you loud and clear on those issues and we'll work with my clients to --

THE COURT: Great.

MR. GOLDBERG: -- endeavor to respond. I would -- I can definitively answer the first question, however --

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out in three months; whereas, people in the unsupported states have to wait six months even -- not just because we're trying to solve the ability to give them crypto, but even if they don't want in-kind distributions, even if they would prefer to be cashed out, they nevertheless still have to wait six months.

And I don't -- I am having a lot more trouble understanding a proper basis for that different treatment. And I'm suggesting that perhaps the agreement could easily be changed so that if somebody in the unsupported jurisdictions simply makes an election in a form that the parties can designate, that they too can get their cash within three months. I think that would go a very long way towards resolving the arguments about unequal treatment of the creditors and of the customers.

And the other provision I wanted to address that came up a lot yesterday was the transfer of customer information. And I understand the argument about the Debtors' rights to sell the information. I understand that at least part of what's going on here is an effort to give Binance the chance to market itself to customers. I understand that. And I understand for that reason that you want -- I certainly understand why you want to contact information with the customers' email addresses, addresses, so you can try to convince them to be part of your platform.

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THE COURT: Yeah.

MR. GOLDBERG: -- which was we included language in the confirmation order which is at the end of Paragraph 99 to make clear that the -- any cryptocurrency that is delivered to Binance remains property of the Debtors and remains property of the customers to which those coins should be allocated. And we are happy to include any language that provides comfort on that issue.

THE COURT: Very good.

MR. GOLDBERG: That is absolutely the intent.

THE COURT: Very good. I appreciate that. Thank you.

MR. GOLDBERG: Thank you, Your Honor.

MR. SLADE: Good morning, Your Honor.

THE COURT: Good morning.

MR. SLADE: Mike Slade for the Debtors. Before -- we have one more witness, but I want to offer a number of the, what I'm hoping will be noncontroversial exhibits into evidence first. Is that okay?

THE COURT: Yes. Please.

MR. SLADE: First, I would like to offer Docket No. 1125, which is the most recent version of the plan of reorganization.

THE COURT: All right. It seems to me I have to have that in evidence as it's what we're debating today, so

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I will admit that into evidence.

MR. SLADE: And then from our exhibit list, which was filed at Docket No. 1129, I first want to offer the exhibits related to the purchase agreements so that's Exhibits 7, 6, 8, and 9, Docket No. 248, 748, 775, and 835. And those are the asset purchase agreement and the first amendment and the notice of successful bidder and also Exhibit 11, Docket No. 860, which is, Your Honor, order approving our entry into the asset purchase agreement.

THE COURT: All right. I think I can take judicial notice of those documents and I will do so and they are admitted into evidence.

(Exhibits 6, 7, 8, 9, 11 entered into evidence)

MR. SLADE: Thank you. I would like to offer the plan supplement documents, so that again, off of our exhibit list, Exhibit 15, 16, and 20 through 23. Those are Docket Nos. 943, 951, 986, 1006, 1035, and 1115.

THE COURT: Once again, these are documents for which approval is being sought. I can take judicial notice of them and I do so. They are in evidence for this proceeding.

(Exhibits 15, 16, 20 through 23 entered into evidence)

MR. SLADE: Thank you, Your Honor. I offer the customer agreement, which is Exhibit 19, also Docket No.

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the record, please.

THE WITNESS: Brian Tichenor.

THE COURT: All right. Counsel, you may proceed.

MR. SLADE: Thank you, Your Honor.

DIRECT EXAMINATION OF BRIAN TICHENOR

BY MR. SLADE:

Q Just to finish this up quickly, I'm handing you a copy of what is Exhibit 19 which was also on the docket at Docket 1074 at Pages 16 to 55. That's the Voyager customer agreement. Are you familiar with that document, Mr. Tichenor?

A In a limited capacity, yes.

Q Have you reviewed it before?

A Yes.

Q And have you served as investment banker to the Debtors since the petition date?

A I have.

MR. SLADE: Your Honor, I offer Exhibit 19.

THE COURT: All right, is there any objection or any desire to voir dire the witnesses to that exhibit? Okay. The exhibit is admitted.

(Exhibit 19 entered into evidence)

MR. SLADE: Thank you, Your Honor. I do have some supplemental direct for Mr. Tichenor, but before I get there, I would like to offer his declaration which is on the

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1074 at Pages 16 through 55.

THE COURT: This is -- okay. That's not a document that's presented for my approval. Is there somebody who can verify that that's the true and correct copy of the customer agreement?

MR. SLADE: I can ask Mr. Tichenor who's our last witness.

THE COURT: Okay.

MR. SLADE: Sure. And the other document I mentioned earlier, Docket No. 1109-2, which is the resume of proposed plan administrator.

THE COURT: Somebody's going to need to testify and verify that, I think.

MR. SLADE: Fair enough. We'll --

THE COURT: Okay.

MR. SLADE: -- work with the Committee and figure that out.

THE COURT: Great. Thanks.

MR. SLADE: And our last witness, Your Honor, is Mr. Tichenor.

THE COURT: Mr. Tichenor, do you swear that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do, Your Honor.

THE COURT: Thank you. State your full name for

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docket at Docket No. 1113. It's also Exhibit 3 on our exhibit list which was, again, back at 1129.

THE COURT: Are there any objections to the admission of Mr. Tichenor's declaration into evidence? All right. Anybody will have the right to cross examine him. The declaration is admitted.

(Declaration of Brian Tichenor entered into evidence)

MR. SLADE: Thank you.

BY MR. SLADE:

Q Okay. Mr. Tichenor, I want to get into a number of the issues that we talked about during the hearing yesterday. First, I think you heard it, some of the regulators and some customers have expressed concerns and reservations about Binance.US; would you agree?

A I would.

Q Now, I want to discuss exactly why the Debtors decided to go through the complexity of having a Binance deal as plan A and the toggle as plan B. Okay?

A Okay.

Q How much value leakage would there be if the Debtors decide to exercise their fiduciary out and move away from Binance towards the toggle plan?

A We would estimate that the differential would be \$100 million, approximately.

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Q Can you describe for the Court what the \$100 million of value leakage consists of?

A So of the \$100 million of value leakage, 20 million of that would relate to the differential from the purchase price perspective relating to Binance's upfront purchase price consideration of \$20 million. The remaining \$80 million relates primarily to value leakage associated with two components.

One would be estimated incremental value reduction associated with VGX token and the lack of support from Binance.US perspective and inability to potentially create additional value for that token. That is a relatively small component of the estimated \$80 million. The remaining component relates to additional discounts that would likely be associated with the liquidation of the 35 unsupported tokens on Voyager platform.

Q Okay. I want to provide the Court with some more detail on that than we received yesterday. So there was discussion about what it meant for there to be 35 unsupported coins. Can you describe for the Court what that means?

A Yeah. So the unsupported coins -- and again, this is based on my understanding and discussions with the management team of Voyager is that there are 35 tokens for which the company's Bedrock code which is the foundation for

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transfer. It might be transaction, so I apologize if I have that backwards. But generally, when people think of AML and KYC, it relates to an onboarding process. KYT relates to the sending of funds and so what that really ultimately relates to is that the party, which is sending the funds, in this case Voyager, knows the counterparty on the other end of that transaction.

And the primary purpose of that is to make sure that you're complying with federal regulations related to, for example, not sending funds to North Korean wallets or Iranian wallets. And so generally, what happens for cryptocurrency platforms, given the ecosystem more broadly and the ability to easily transfer funds to third-party wallets is that there's a list of blacklisted wallets effectively, through FinCEN for example, that publishes that.

And so what these third party providers do is they allow Voyager to make sure that they are not sending crypto to parties that are banned in the United States from an AML and KYC perspective. So it allows them to continue to comply with federal law relating to the transfer of funds.

Q And is what you were saying that the -- with respect to the unsupported coins, Voyager doesn't have the services in place to do the KYT process?

A That is my understanding, and in part that relates to

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which the company uses in order to facilitate the withdrawal and transfer of cryptocurrencies for customers, does not support the protocols for those 35 tokens. So there's not an ability for that Bedrock code to be used in order to be able to execute and facilitate the withdrawal of those tokens into customers' wallets.

Historically, the company has never offered an ability to withdraw those 35 tokens. They've always been done on a basis whereby a customer would use cash on the platform to acquire the token. Voyager would, through market maker arrangements, acquire the token from market makers. It would hold them in its own wallets and then to the extent of a customer sought to withdraw, they would need to sell those tokens into cash and the subsequent trade would occur on the other end.

In addition to that, there are limitations from, for example, an AML and KYC perspective that also enable the ability for Voyager to appropriately comply with AML and KYT procedures around the withdrawal of tokens and they utilize third-party providers such as chain analysis to verify the party and wallet address that that token is being sent to. That functionality is not integrated into the platform related to those 35 as well.

Q Can you describe for us what KYT is?

A Yeah, so it's a -- and I believe it's know your

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the functionality of those third-party providers. Not all of them support all of the tokens. So there are inherently limitations around that and we understand that there are limitations with the primary third-party verification provider for those tokens that Voyager uses. They don't -- they are not supported.

Q So one of the customers asked us yesterday, what would be necessary for Voyager to develop the internal capability to be able to support the 35 unsupported tokens?

A So based on my discussions with management, my understanding is that it would require developers to be brought in in order to rewrite a large portion of the Bedrock code to enable that system to be able to support from a protocol perspective the actual ability to facilitate those withdrawals.

It would also require the company to engage with other third-party providers related to KYT wallet verification, onboard those, integrate those into its platform. Generally, my understanding is that it would take about 6 to 9 months -- this is what's been described to me -- to revise the Bedrock code per protocol. I do imagine that some of that could be done in parallel, but we do understand it to be a lengthy process.

And what is not surprising in our minds, given the fact that you would, you know, generally for a code update like

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that want to do things like verifications and test transactions, so it is -- we understand to be a very lengthy and likely expensive procedure in order to be able to do that.

Q Okay. Can you give us an order of magnitude of the additional cost?

A I would imagine that it would likely be in easily the single-digit millions, if not tens of millions. I don't have a specific number, though.

Q Okay. So given this, in your opinion, is it realistic if Voyager were to toggle to plan B and do the self-liquidation for Voyager to also develop the capabilities to distribute the 35 currently unsupported coins directly to customers?

A I do not. I believe that the cost and time delay would not merit the decision to pursue that.

Q Okay, so what happens to the 35 unsupported coins in the toggle scenario?

A In the toggle scenario, the Debtor would in its best efforts seek to liquidate those coins into cash and it would liquidate those coins into cash using best efforts in order to minimize any potential value leakage associated with it, but it would likely involve the sale of that coin into the market or via block trade transactions with third-party OTC market makers.

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Q When will that decision be made?

A It would likely be made at a time three to four weeks from approval of the plan in advance of a closing. We would confer with our board of directors from an advisory perspective. The advisors would also work together with the UCC in consultation to make a determination and recommendation on which path to ultimately move forward with.

Q Okay. And I just want to be absolutely clear to all the customers that are listening on the phone. Are you ready, sitting here today, to tell the Court and customers that for sure, if the Court confirms the plan, we're going to be selling to Binance?

A Do you mind repeating the question again? Sorry.

Q Sure. I want -- sorry, maybe it was even unclear. I just want to be absolutely clear for all the people that are listening. Okay? Are you sitting here today telling the Court and all of these customers that if the plan is confirmed, we're going to be selling to Binance?

A No.

THE COURT: Just to be clear, Mr. Tichenor, that's the current intent, but you have the right to change your mind; is that essentially what you're saying?

THE WITNESS: What I'm saying, Your Honor, is that we are continuing to do due diligence on Binance. At this

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Q And has the company gone out and gotten quotes for what it would receive for those 35 unsupported tokens in that scenario?

A It has. We spoke with multiple market makers when evaluating the toggle scenario in order to validate what we believed appropriate discounts would ultimately be relating to those tokens.

Q And what were the quotes that you got?

A They were very large. In many instances, they were 50 percent plus and we did speak with what we believe to be a number of the largest market makers in both the traditional finance as well as crypto market making capacity. In some instances, they do both. But we did seek and receive quotes from multiple parties.

Q Just so we're clear, you're talking about a 50 percent discount?

A Fifty percent discount relative to the current prices, yes.

Q Okay. So is the potential \$100 million in leakage caused by a potential toggle the reason that the Debtors have the Binance transaction as option A?

A Yes, among other things.

Q Okay. Has Voyager decided definitively today that it will close the Binance transaction?

A No.

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point in time, we would feel comfortable with the toggle scenario. That obviously is a path that the Debtor has an ability to fully control. But we do continue to do work around Binance and there are, you know, for example, allegations that are occurring in real time as early as this morning that we continue to evaluate. We would continue to evaluate in advance of any closing.

BY MR. SLADE:

Q Okay. So I want to step back and just describe for the Court the diligence that you've done. And so can you just describe for the Court what diligence have you done on Binance.US?

A Yeah, so as outlined in my declaration, we have reviewed audited financial statements from their 2021 audit. We reviewed interim unaudited financial statements. We reviewed their available liquidity. We reviewed various party services agreements. We've reviewed their AML and KYC procedures. We've had multiple discussions with them relating to --

THE COURT: Slow down and repeat all those things.

THE WITNESS: Yes.

THE COURT: The 2021 audited financials, 2022 unaudited, did you say?

THE WITNESS: Yes, that's correct, Your Honor.

THE COURT: What else?

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1 THE WITNESS: We also reviewed their available  
2 funds and liquidity including a proof of funds.

3 THE COURT: Okay.

4 THE WITNESS: We reviewed related party services  
5 agreements.

6 THE COURT: Okay.

7 THE WITNESS: We have reviewed their wallet  
8 infrastructure. We had discussions with them relating to  
9 that. And by saying reviewed, we have had discussions  
10 relating to their wallet infrastructure and representations  
11 have been made to us about it.

12 THE COURT: Okay.

13 THE WITNESS: Additionally, we reviewed their AML  
14 and KYC procedures and manuals.

15 THE COURT: Okay.

16 THE WITNESS: Their money transmitter licensing  
17 status.

18 THE COURT: Okay.

19 THE WITNESS: Business plans that they had  
20 submitted to selected states in connection with MTL  
21 approvals.

22 THE COURT: Okay.

23 THE WITNESS: Additionally, above and beyond that,  
24 we have reviewed information independently relating to some  
25 of their public wallets and we continue to have discussions

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1 Q Does Binance.US hold customer assets solely in a  
2 custodial capacity?

3 A Yes.

4 Q Who can move and transfer crypto assets away from the  
5 Binance.US platform?

6 A Only Binance.com -- excuse me, Binance.US employees.

7 Q Got it. All right. Does Binance.US lend or  
8 rehypothecate customer asset?

9 A No.

10 Q Have you seen Binance.US organizational charts?

11 A I have.

12 Q Where is Binance.US incorporated?

13 A In Delaware with a headquarters in Palo Alto.

14 Q Who owns Binance.US?

15 A We understand it to be 20 percent owned by Series A  
16 seen investors and 80 percent owned through an ultimate  
17 owner CZ.

18 Q Do you have an understanding of Binance.US' security  
19 protocols?

20 A Yes.

21 Q Can you just describe that as a high level for the  
22 Court?

23 A Yes. So we reviewed security protocols relating to  
24 documents that were provided to us, for example, relating to  
25 their ISO 27001 standards which relate to general IT

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1 with them relating to a range of factors around risks  
2 associated with Binance.US as a potential counterparty.

3 THE COURT: Thank you.

4 BY MR. SLADE:

5 Q Can you tell the Court just approximately how many  
6 meetings and phone calls you have doing diligence about  
7 Binance.US?

8 A It would be dozens over a multi-month period.

9 Q You said you reviewed proof of funds. What was that  
10 specifically that you received from them?

11 A We received a bank statement from them.

12 Q This -- you mentioned you got audited financial  
13 statements from 2021. This also came up in hearing  
14 yesterday. Do you know if Binance has an auditor?

15 A They've made representations to us that they do have a  
16 new auditor. Yes.

17 Q Okay. This also came up yesterday. Does Binance to  
18 your knowledge have a fiat banking relationship?

19 A Yes.

20 Q Okay. So I want to ask you this question for your  
21 understanding based on the diligence you've done of  
22 Binance.US, okay? It's a series of questions with that  
23 premise. Okay? Does Binance.US maintain digital assets on  
24 a one-to-one reserve basis?

25 A Yes.

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1 security protocols. We also reviewed a third-party audit  
2 relating to SOC 2 compliance, which relates to protection of  
3 underlying customer funds from an IT security perspective.

4 And then from a wallet infrastructure perspective, we've had  
5 multiple discussions with them relating to where, for  
6 example, private keys are stored, the ability to move funds,  
7 who has authorization to be able to move funds, how  
8 transfers work. So we've had a number of discussions with  
9 them relating to that.

10 Q Okay. And the Court asked this question yesterday. I  
11 just want to pose it directly to you. Are their safeguards  
12 to prevent crypto from being taken off the Binance.US  
13 platform?

14 A That is my understanding, yes.

15 Q Okay. Do you understand where the keys to crypto at  
16 Binance.US are held?

17 A I do.

18 Q And what can you say publicly about that?

19 A So we are bound by confidentiality. We do take some of  
20 the key elements very seriously relating to privacy concerns  
21 around that. We understand the keys to be held at  
22 enterprise grade cloud storage facilities that in -- for the  
23 majority of those keys are at a level that would meet  
24 military grade standards.

25 Q Are you familiar with the facilities at which these

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1 keys are held?

2 A I'm aware of the facilities, yes.

3 Q Okay, just so we're clear, have you visited that?

4 A I have not.

5 Q All right. So all that said, are there aspects of

6 Binance.US' business that you are still doing diligence on?

7 A Yes.

8 Q What are the issues you continue to track?

9 A So for example, you know, as I think we outlined in our

10 -- in the declaration, we have had discussions with

11 Binance.US as early as Wednesday. There was a large meeting

12 with both Moelis and various other advisors relating to

13 Binance.US' relationship with Merit Peak and allegations

14 that were made relating to a Reuters article that was

15 published.

16 For example, our understanding based on information

17 that was provided to us relating to that, we don't believe

18 that for example, there was any comingling of customer

19 funds. So for example, we understood that deposits relative

20 to withdrawals were effectively on one-for-one basis and so

21 therefore there wasn't any inappropriate withdrawals of

22 underlying customer funds. But that is an item, for

23 example, that we continue to do due diligence on.

24 Q Okay. Are there any other items you're tracking?

25 A Yes. So after the hearing yesterday, we became aware

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1 A I don't recall the exact words that were used, but CZ

2 had tweeted in a reply to an article relating to this exact

3 hearing around the Voyager, Binance.US transaction what

4 seemed to be concerns around potentially pulling out of

5 either the U.S. or the transaction more broadly.

6 Q Okay. And was there a follow-up tweet?

7 A There was. That's my understanding, yes.

8 Q And what was the follow-up tweet?

9 A That they were still very interested in moving forward

10 with the deal as is and that the tweet didn't relate to the

11 specific transaction.

12 Q Okay. So just so we're clear, Mr. Tichenor, if the

13 Court confirms the plan, how will the decision be made

14 between closing of the -- between either closing the Binance

15 transaction or toggling to the self-liquidation option?

16 A So the decision will be made among the advisors

17 ultimately making a recommendation, and that would include

18 Moelis, Kirkland, BRG on the Debtors' side having a

19 discussion ultimately with the board of directors and the

20 special committee to determine which appropriate path would

21 be made on a go-forward basis. We would make that

22 recommendation in consultation with the UCC and its various

23 advisors including McDermott and FTI. And ultimately, the

24 determination would likely be made relating to whether it

25 was the appropriate path on a risk adjusted basis to

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1 of a letter that was sent to Binance.US and CZ from three

2 senators including Elizabeth Warren relating to allegations

3 that, you know, would largely seemed to reflect articles

4 from Reuters. That said, this came out last night and we

5 are actively engaging in and having discussions and we had

6 discussions minutes leading up to the hearing this morning

7 with Binance around that and we'll continue to have

8 discussions with them post this hearing relating to that.

9 Q And speaking of this morning, did you see CZ's tweet

10 from this morning?

11 A I did.

12 Q All right. What was your reaction?

13 THE COURT: Somebody tell me what it is.

14 MR. SLADE: We can provide it to the Court. There

15 were -- there are --

16 THE COURT: -- the witness first, tell me what it

17 is.

18 MR. SLADE: Sure.

19 THE COURT: Tell me his reaction.

20 MR. SLADE: I apologize.

21 THE COURT: His reaction's going to mean nothing

22 to me if I don't know what it was.

23 MR. SLADE: Totally fair, Your Honor.

24 BY MR. SLADE:

25 Q Just describe the tweet for the Court.

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1 continue to move forward with.

2 Q Okay. Well, wherever we are, Mr. Tichenor, why not

3 just toggle now, given what you are talking about, the

4 concerns of the regulators and the Merit Peak issue and the

5 issues you're still dealing with and the media reports and

6 congressional letters and the tweets? Why not just toggle

7 now?

8 A Because based on our analysis, the Binance transaction

9 potentially provides up to an incremental \$100 million of

10 additional value for customers which we view as being

11 material. In addition, you know, we do believe that it's

12 like a potentially faster path for customers being able to

13 recover funds as well, just given logistical and operational

14 elements of executing on a self-liquidating toggle.

15 MR. SLADE: That's all, Your Honor. Thank you.

16 Pass the witness.

17 THE COURT: All right. Is there anybody here in

18 the courtroom who wishes to cross examine Mr. Tichenor?

19 MR. BRUH: Your Honor.

20 THE COURT: Yes, Mr. Bruh.

21 MR. BRUH: Thank you. Mark Bruh for the United

22 States Trustee.

23 CROSS EXAMINATION OF BRIAN TICHENOR

24 BY MR. BRUH:

25 Q Good morning, Mr. Tichenor. I just have a couple of

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quick questions for you. You spoke about the letter by the three U.S. senators to Changpeng Zhao -- CZ, that is -- and Binance.US and you kind of gave a broad brush as to what that letter is about. Isn't it correct that the letter deals with respect to potential sanctions evasion, money laundering, and unlicensed money transmission?

A I don't recall the exact specifics. I apologize. We were reading this very late last night. But that's my understanding, yes.

Q Okay. And did you or your team look into this at all, those issues?

A We looked into a number of issues as I think I outlined relating to Binance.US' specific AML and KYC procedures. For example, we have had multiple discussions with them. We have performed extensive diligence in part relating to a lot of the allegations that were outlined in various Reuters articles, but I can't speak to, for example, elements of Binance.com as a counterparty. That would not be within our scope of diligence.

Q Today, you spoke about that the -- in the event the Debtors toggle, that the plan -- the sale to Binance, it would be \$100 million difference; is that right?

A That was the estimate, yes.

Q Yes. But yesterday, Mr. Renzi testified that the \$20 million infusion by Binance would only be about a 1 percent

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remaining 80 million, my recollection was that approximately 20 million of that was relating to an estimated incremental reduction in value associated with VGX as a specific token with the remaining portion of that being 60 million relating to liquidity discounts associated with the full liquidation of 35 tokens which cannot be returned to customers on an in-kind basis through the Voyager platform.

MR. BRUH: Okay. I have no further questions. Thank you.

THE COURT: Anybody else who's here who wishes to cross examine Mr. Tichenor?

MR. EVANS: Your Honor, Joe Evans from the UCC. If possible, if the creditors on the line have questions, I'd like them to go first so we can follow up, or we can go now if you prefer.

THE COURT: All right, well before we go to the people on the line, is there anybody other than the Committee who has questions that they wish to ask.

MR. UPTEGROVE: Yes, Your Honor.

THE COURT: Hang on one second. We have not quite --

MR. UPTEGROVE: Yes, Your Honor.

THE COURT: -- the telephone yet. Anybody else here in the courtroom? All right, anybody on the telephone who wishes to ask questions?

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increase to customers and then -- isn't that right?

A That's my recollection, Mr. Renzi's testimony yesterday, yes.

Q And then he further testified based upon certain questions by the pro se customers than in actuality, that 1 percent would be less when you take into account the administrative costs incurred by the estate; isn't that right?

MR. SLADE: Your Honor, I would object. I don't think that's what he said.

THE COURT: I don't think it is either, so I'll sustain the objection.

BY MR. BRUH:

Q Can you just explain how you come to the \$100 million number as opposed to the 1 percent number for me?

MR. SLADE: I object. I don't think those are the same things. You can answer the question.

BY MR. BRUH:

A Yesh, so as I think I previously stated, the components of the \$100 million -- approximate, again, \$100 million differential because it does move in real time --

Q I understand.

A -- were that it was \$20 million relating to the up-front purchase price consideration with the remaining 80 million, so out of 100, you know, less the 20, of the

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MR. UPTEGROVE: Yes, Your Honor. William Uptegrove on behalf of the United States Securities and Exchange Commission.

THE COURT: Okay.

CROSS EXAMINATION OF BRIAN TICHENOR

BY MR. UPTEGROVE:

Q Good morning, Mr. Tichenor. I'd like to ask you some questions about the safeguards for protecting customer assets once those assets have been transferred to the Binance.US platform. You've already testified some about that. What specific role did you have in the Debtors' due diligence of Binance.US?

A So I'm an investment banker to Voyager and my specific involvement was participation in various discussions and meetings with Binance.US relating to the diligence. I was also involved in, for example, preparation of diligence questions in connection with that work.

Q Anything else?

A I'm not sure I follow the question.

Q Any other part -- with respect to your role, is there anything else that you did in connection with the due diligence of Binance.US?

A I believe we outlined the work that we had done previously. You know, we've had multiple discussions with them. No. I mean, I think I stated previously the work

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1 that we have performed.

2 Q Presumably it was part of a team. Who overall was  
3 responsible for conducting the Debtors' due diligence?

4 A It would be -- I am a member of our team at Moelis.  
5 I'm one of several individuals, so it would include myself  
6 and many others that are also on the Moelis team in addition  
7 to myself. It also included K&E, for example, as counsel to  
8 the Debtor. It included BRG who is the financial advisor to  
9 the Debtor. You know, we have done this diligence in  
10 connection with the UCC's advisors, for example.

11 So as I mentioned, I think previously, for example, the  
12 Merit Peak review that we had on Wednesday, I was unable to  
13 physically participate in that. We did have representatives  
14 from Moelis at that meeting, but it included representatives  
15 from all of the firms that I listed, including, you know,  
16 the UCC's advisors. So it's not just a Moelis-specific  
17 diligence effort.

18 Q Is there anybody on the Moelis team that has a  
19 background in crypto asset security?

20 A In which context? From a legal perspective? I'm  
21 sorry. I don't follow the nature of the question.

22 Q No, in a technical capacity. So you know, whether or  
23 not the crypto assets are safely custodied on the platform  
24 and access issues and keys all of that stuff, in a technical  
25 way. Is there somebody on the Moelis team that had that

1 perspective that we would view as being critical and kind of  
2 foundational from a safeguard perspective.

3 Q I'm sorry, said there was the ISO certificate and then  
4 what was the next thing that you reviewed?

5 A A SOC 2 audit.

6 Q That like sock, like you put on your feet?

7 A It's S as in Sam, O as in orange, and C as in car.

8 Q And then, so is the ISO certificate, the SOC 2  
9 compliance, there was an audit, too, right, a third-party  
10 audit?

11 A We did. We reviewed their third-party 2021 audit --  
12 audited financials.

13 Q So the third-party audit was of financials. Was there  
14 an audit done of the internal controls and safeguards over  
15 crypto assets?

16 A I don't recall personally reviewing any documents  
17 relating to, for example, like an internal control report.  
18 I do know we received representations relating to, you know,  
19 internal controls and procedures, you know, being in line  
20 with leading industry standards, for example, but I didn't  
21 personally review any documents related to that, no.

22 Q So just to be clear, when you say that you reviewed a  
23 third-party audit, you're talking about the audit of the  
24 financials: balance sheet, income statement, statement of  
25 cash flows?

1 type of expertise?

2 A We have individuals on the team that for example, focus  
3 specifically on the cryptocurrency sector. That is an  
4 industry group that from a firm perspective we do coverage  
5 work on. But to be clear, Moelis is an investment bank. We  
6 are not a consultancy group relating to, for example, you  
7 know, what would be appropriate from an IT or custody  
8 protocol perspective. We don't do code reviews, for  
9 example. We do work that is in line with what scope and  
10 services investment bankers typically perform.

11 Q So the answer is no?

12 A Yeah, I would say the answer would be no.

13 Q Is there anyone else on the Debtors' due diligence team  
14 that has that type of technical expertise?

15 A Not to my knowledge.

16 Q With respect to the nature of the wallet infrastructure  
17 and safeguards, did you personally review any specific  
18 documents?

19 A I personally reviewed, I would say, several documents.  
20 The two documents that I think I previously mentioned, which  
21 were the ISO 27001 certificate and audit report. That's a  
22 certification that's performed by a third-party firm. We  
23 also reviewed their SOC 2 compliance report. Additionally,  
24 too, we did receive sworn statements from company officers  
25 relating to a number of these elements from a consideration

1 A So when I was speaking of the audits, there were three  
2 types of audits. One would be the financial audit, which is  
3 one that you would be referring to. Additionally, the ISO  
4 and SOC 2 reports are both technically audits. They're  
5 audits from an information security perspective and they are  
6 performed by third-party firms.

7 Q Got you. So that leads to my next question. Can you  
8 elaborate a little bit more about what ISO is, who performs  
9 it, what it entails, what the steps are, and what would be --  
10 -- well, break that down. First, who conducted the ISO  
11 audit?

12 A I don't recall the exact firm.

13 Q Do you recall whether it's a household name or somebody  
14 you'd have to google?

15 A It was not a name that I'm familiar with, but I'm not  
16 as familiar with reviewing ISO audits generally speaking, so  
17 I can't speak to the nature of whether that's a well-known  
18 firm, for example, that performs that type of audit.

19 Q Do you have a sense of their technical capacity and  
20 certification and experience in this area?

21 A I think I answered that. I can't speak to that.

22 Q Do you know whether it has two employees or two hundred  
23 employees?

24 A I don't recall.

25 Q What was the main finding of the ISO report?

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1 A That they were in compliance with the ISO 27001  
 2 standards which I understand to relate to ISO being a third-  
 3 party International Standards Organization and my  
 4 understanding -- and again, this is -- you know, we are  
 5 investment bankers. This is outside of our normal scope of  
 6 services. My understanding is that they were in compliance  
 7 with these standards which relate primarily to IT security  
 8 protocols and best practices, procedures.  
 9 Q Yeah. I'm a lawyer, so if someone gave me a ISO  
 10 certificate, I wouldn't know, you know, heads or tails of  
 11 it. Who did -- so I understand, who did the Debtor give it  
 12 to that -- let me rephrase that. Who on the Debtors' team  
 13 reviewed the ISO certificate that had adequate industry and  
 14 technical expertise to opine on whether it was a sufficient  
 15 and adequate review of the Binance security protocols?  
 16 A I don't believe that there was any -- I don't know the  
 17 answer.  
 18 Q So as far as you know, no one with adequate knowledge  
 19 on the Debtors' team reviewed ISO report?  
 20 A I can't speak to, for example, whether there was an  
 21 individual at BRG, which would be appropriate, you know,  
 22 from that perspective. But from the Moelis perspective, I  
 23 can speak to what I know from us as a firm.  
 24 Q What does this SOC 2 -- is it a report?  
 25 A It's similar to a compliance certificate from a third-

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1 protection of customer PII specifically.  
 2 Q What was the conclusion of the SOC 2 report?  
 3 A That they met the standards.  
 4 Q Were there any exceptions?  
 5 A I don't recall.  
 6 Q (Indiscernible). How long is the SOC 2 report?  
 7 A I don't recall. I read it a couple weeks ago.  
 8 Q Two pages, 200 pages?  
 9 A I don't know. I don't recall it being --  
 10 Q Who on the Debtor --  
 11 A -- two pages. I remember it being longer than that,  
 12 but I don't know how long.  
 13 Q Do you remember how long it took you to review it?  
 14 A I read it an afternoon. I don't recall it being 200  
 15 pages. I don't recall it being two pages.  
 16 Q You read it in an afternoon, as you read it during the  
 17 afternoon or you read it, it took you (audio drops)  
 18 afternoon?  
 19 A I read it during an afternoon.  
 20 Q Was there anyone on the Debtors' team who reviewed the  
 21 SOC 2 report that had adequate technical experience and  
 22 expertise to verify what was in the report?  
 23 A I can't speak to that, and candidly, I don't even think  
 24 as an investment banker I would be in a position to  
 25 determine who even would be, given my knowledge of, you

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1 party auditor relating to their compliance with SOC 2  
 2 standards.  
 3 Q How is it different than the ISO certificate?  
 4 A My understanding is that ISO is a separate  
 5 organization. SOC, I believe, relates to ISCPA standards  
 6 relating to the privacy or the custody and protection of  
 7 customer privacy information as a financial services banker.  
 8 For example, this is something that typically comes up in  
 9 the context of M&A transactions when dealing with financial  
 10 services organizations that deal with the protection of  
 11 customer PII.  
 12 It's -- my understanding is it's an industry and  
 13 worldwide recognized standard relating to the protection of  
 14 customer PII and the safeguarding of such.  
 15 Q You might have said it there and I apologize, but are  
 16 there differences between the ISO and SOC 2 reports or  
 17 certification?  
 18 A I believe there are.  
 19 Q What are they?  
 20 A Excuse me, I didn't hear that.  
 21 THE COURT: What are they?  
 22 BY MR. UPTGROVE:  
 23 A Oh, what are they? My recollection is that one relates  
 24 to general IT security protocols and standards. The other  
 25 relates specifically to safeguards relating to the

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1 know, these reports and industry standards.  
 2 Q You mentioned previously in your testimony that there  
 3 were multiple discussions with people at Binance, correct?  
 4 A Correct.  
 5 Q And those discussions touched on the issues of asset  
 6 security and wallet infrastructure, right?  
 7 A That's correct.  
 8 Q And did those discussions involve people on the  
 9 Debtors' side other than Moelis people?  
 10 A I believe so. I don't --  
 11 Q Who were those people?  
 12 A -- specifically. I believe BRG --  
 13 Q -- a financial -- was that a financial advisor, right?  
 14 I'm sorry.  
 15 A Go ahead. I know I recall at least one discussion that  
 16 involved K&E. We also had discussions with, for example,  
 17 management relating to, you know, what we learned during  
 18 those discussions to determine at least in their judgment  
 19 whether or not what was being presented to us made sense and  
 20 met industry standards, for example.  
 21 Q And in those discussions with people from management  
 22 and other advisors to the Debtor, was there anyone in those  
 23 meetings who had adequate technical expertise and experience  
 24 to opine or ask questions about the SOC 2 or ISO  
 25 certificates or reports?

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1 THE COURT: That's the third or fourth time you  
2 vaguely asked about people with adequate technical  
3 experience. I'm going to stop it because I don't know what  
4 it means. You know, presumably you get an audited report  
5 from somebody who has adequate technical experience, so what  
6 are you asking? Did you have another auditor review this  
7 audit? Or are you saying, you know, like did you have  
8 another financial auditor review the financial audited  
9 statements? So I don't really know what you're asking. So  
10 you've got to be more clear, because otherwise it's not  
11 helpful to me.

12 MR. UPTEGROVE: Understood.

13 BY MR. UPTEGROVE:

14 Q Mr. Tichenor, you had previously testified that there  
15 was -- strike that. So when there was discussions among  
16 management and the Debtors' advisors regarding crypto asset  
17 security and wallet infrastructure issues, how many of those  
18 meetings have there been? Let me rephrase that. Sorry,  
19 strike that. How many meetings have there been regarding  
20 issues of asset security and wallet infrastructure at  
21 Binance.US --

22 A I would say --

23 Q -- among the Debtor and its advisors?

24 A Numerous. I can't give you an exact number, but it's  
25 something that in light of everything going on from a market

1 what we had learned during those discussions and discussions  
2 with our board.

3 Q At those discussions, was there anyone that you would  
4 term a technical expert on issues of wallet infrastructure  
5 or the security of crypto assets?

6 A There would be members from, for example, the Voyager  
7 management team that operate a crypto exchange and would be  
8 familiar with those.

9 Q What about the advisors?

10 A If you're asking if we had any specific technical  
11 advisors relating to these dynamics that focus specifically  
12 on code reviews or technical elements, we did not hire an  
13 additional external advisor relating to that, no. Or the  
14 Debtor did not engage on.

15 Q And you said -- I'm sorry.

16 A If that's the question that you're asking.

17 Q When you say, who were the Voyager management people  
18 you're referring to in this instance?

19 A So for example, the CEO Steve Ehrlich.

20 Q Anyone else?

21 A I'm sure that there were others on those meetings. I  
22 don't recall specifically, at any specific instance.

23 Q Do you happen to know whether Mr. Ehrlich has technical  
24 expertise in wallet infrastructure and crypto asset  
25 security?

1 perspective was top of mind for us from a diligence  
2 perspective.

3 Q From the Debtors' perspective, who is typically present  
4 at those meetings (audio drops) typical?

5 MR. SLADE: Your Honor, can I lodge a brief  
6 objection? I guess I'm concerned that these questions are  
7 not being asked as being relevant to this proceeding, as  
8 opposed to additional proceedings that the questioner is  
9 anticipating bringing later. Seems -- this seems  
10 irrelevant.

11 THE COURT: Overruled. You can answer.

12 BY MR. UPTEGROVE:

13 A My -- excuse me, do you mind repeating the question  
14 again?

15 Q Sure. Just to the extent there was a typical  
16 representation, what was the typical representation on the  
17 Debtors' side for the meetings relating to discussions on  
18 crypto assets, security, and wallet infrastructure?

19 A Generally, I believe it involved myself, others from  
20 Moelis, and then in certain instances, other advisors that  
21 have been advising both the Debtor and the UCC. And I know  
22 we've had discussions with the UCC for -- the UCC's  
23 advisors, for example, relating to these dynamics. We also  
24 had discussions with our board of directors relating to this  
25 and presented findings under confidentiality relating to

1 A I think he's familiar with what our industry protocols  
2 and standards, which was the basis for the discussion  
3 largely relating to the ability of any single individual,  
4 for example, to move funds or how structurally, for example,  
5 like a hot wallet/cold wallet structure would work.

6 Q Was Moelis engaged by the Debtor to assess the  
7 safeguards Binance.US has in place for crypto assets?

8 A No.

9 Q In Paragraph 23 of your declaration, you state Moelis  
10 is not a technical expert on matters relating to the  
11 appropriateness of information security or other custody  
12 protocols. Can you explain what you mean by that?

13 A Moelis is a investment bank. The work that we  
14 generally perform is consistent with investment banks. It  
15 relates to financial analysis. It relates to the financial  
16 capacity generally of the counterparty. It would relate to  
17 valuation, for example, but as an investment bank, we are  
18 not technical experts in the sense of a third-party  
19 consultancy group, for example, that oftentimes, you know,  
20 we'll see engaged in certain situations M&A situations that  
21 we'll perform, for example, technical reviews. That's not  
22 inside of the scope of services of Moelis and I don't  
23 pretend to be an expert on a code review, for example.

24 Q Did anyone at Moelis conduct any assessment or audit of  
25 the safeguards Binance.US has in place over customer crypto

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1 assets?

2 A I think I just answered that question. I -- you know,

3 as an investment bank, look, we sought to perform

4 incremental reviews on things that we believed would be

5 important from a counterparty perspective. We sought to get

6 assurances from the counterparty relating to such, including

7 sworn statements around those facts. But, you know, I

8 wouldn't characterize anybody at Moelis as being an expert

9 in that sense. It's not what we do as a firm.

10 Q Are you familiar with something called Binance.com?

11 A I am.

12 Q What's the relationship between Binance.US and

13 Binance.com?

14 A My understanding is, and representations have been made

15 to us, are that there are several commercial agreements

16 between the two entities and that they share a common UBL in

17 CZ.

18 Q Does anyone -- I think you testified about this, but I

19 just want to make it clear. Does anyone from Binance.com or

20 its affiliates have access to the wallets or keys of

21 Binance.US customers?

22 A What's been represented to us is that only Binance.US

23 employees are able to move or transfer crypto and that

24 Binance.com employees don't have the ability to access keys.

25 Q A famous President once said, "Trust but verify." Or I

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1 representations.

2 A We sought to get representations. That was the work

3 that we did.

4 Q There was an earlier purchase agreement in this case

5 with FTX, correct?

6 A There was.

7 Q And you stated in your declaration that FTX and its

8 affiliates unexpectedly collapsed shortly after the Court

9 approved the purchase agreement; is that right?

10 A That's correct.

11 Q What did you mean by unexpected there?

12 A I believe everybody found the FTX bankruptcy to be

13 unexpected. It occurred over a very short period of time

14 and it subsequently turned out to be, from what we

15 understand, a fraud of historical proportions.

16 Q The Debtors conducted due diligence in connection with

17 the FTX transaction, correct?

18 MR. SLADE: Your Honor, can I object? Again, this

19 is not relevant. This is the past and not relevant to

20 what's happening today.

21 THE COURT: I'll allow it. Go ahead.

22 BY MR. UPTGROVE:

23 A So we conducted diligence that is traditional in nature

24 relating to entering into a transaction in a bankruptcy

25 proceeding that includes, for example, reviews of their

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1 should say, a President famously said once, "Trust but

2 verify." What did -- what if anything did Moelis do to

3 verify those representations?

4 A We had discussions with them. We've had numerous

5 discussions with them. We sought to get sworn statements

6 relating to that. You know, but again, like we don't do,

7 for example, like a code review as I think Mr. Slade

8 mentioned. You know, we didn't visit on site, for example,

9 the enterprise storage facility that the keys are hosted at.

10 We sought to get assurances above and beyond typically what

11 we would do in a transaction like this, perform counterparty

12 due diligence, but it would be difficult for me to even say

13 how to perform a independent verification the way that

14 you're describing.

15 Q I think you previously testified that it's your

16 understanding that Binance.com or affiliates of Binance.US

17 do not have the ability to transfer crypto assets on the

18 Binance.US platform; is that right?

19 A Yes, I believe they don't have the ability to move or

20 transfer funds. That's my understanding.

21 Q Did Moelis or the Debtor do anything to verify that

22 other than getting representation?

23 A Are you asking if we did like tests, for example, or

24 internal reviews? I'm not sure I understand the nature --

25 Q Any -- just anything. Just anything other than

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1 ability and financial capacity to be able to close a

2 transaction. We had multiple discussions with management.

3 We received assurances from their advisors including their

4 counsel, S&C. We were aware and listened to, for example,

5 testimony that their CEO made in front of Congressional

6 hearings attesting to the fact that they safeguarded assets

7 and that customers have rights and title to assets. We

8 reviewed, for example, their terms of service related to

9 such. So, you know, that was the nature of diligence that

10 we performed. And we were aware of many of the investors

11 that were in their business as well and had discussions with

12 them about FTX.

13 Q As part of its due diligence, did the Debtor identify

14 any of the problems that ultimately led to FTX's, as you

15 characterized it, collapse?

16 MR. SLADE: Your Honor, I'll object. That's not

17 relevant here.

18 THE COURT: I'll allow it.

19 BY MR. UPTGROVE:

20 A So generally speaking, to the extent that somebody is

21 performing a fraud that, let's say, is \$50 million, there's

22 a balance sheet gap of something of that size, that's

23 something that can be, you know, oftentimes potentially a

24 failure from a diligence perspective. As we understand it,

25 the balance sheet hole and theft of funds relating to FTX is

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close to \$9 billion. The only way to perpetuate a fraud of that scale is through widespread and consistent failure from a primary perspective to provide false statements and assurances. You can't perpetuate fraud of that scale just by you know, a one-off issue, for example. It inherently has to be widespread.

Q So the answer is no.

A In that instance, no. Yeah.

Q What if anything has the Debtor done -- the Debtors done differently during the due diligence in the Binance.US transaction?

A So in light of what happened with FTX and generally, what was going on with the industry more broadly and concerns relating to any counterparty -- and to be clear, this isn't just a Binance.US specific issue. This related to work that we were performing on various parties that sought to engage with the Debtor post the collapse of FTX around a potential transaction. We sought to review their financial capacity and ability to operate as an ongoing business.

We asked some questions around the nature of their operations and assurances that they had previously given to us around the fact that they hold, for example, reserves only on one-for-one basis. We asked for additional verification relating to the fact that they don't

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that in FTX.

Q That's what I'm looking for. So you got in the context of Binance.US, you got sworn statements from Binance.US personnel; is that right?

A That's correct.

Q You didn't previously do that in FTX. That right?

A That's correct and that's uncommon in the context of any M&A or restructuring related situation to get those types of sworn statements. Be highly --

Q What other --

A -- unusual.

Q Understood. Other than that, what other specific steps did the Debtor take that it didn't previously take in the FTX transaction?

A I think the other incremental steps that we took were to ensure from, for example, an APA perspective that to the extent that there were transfers of crypto that we were ensuring that customers, for example, were already signed up to the Binance.US platform. They would already be customers of it. You know, we were not planning to, for example, transfer the crypto in a manner and you know, the protections that were built in around this, to ensure that to the extent there was, you know, widescale fraud, for example, that was being perpetuated that the Debtor itself wasn't exposed on that interim basis in a way that it would

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rehypothecate any assets. We looked at their website. We asked numerous questions.

We performed multiple, multiple meetings and diligence sessions with them to understand and seek to understand facts around the way that they operate their business to identify areas that we understood to have caused issues in other crypto-related bankruptcy situations and that tend to be cause for you know, these types of failures.

Q So I'm not clear, Mr. Tichenor. Did you not look at the website and have multiple meetings in the FTX transaction? What's different -- let me let you answer that question, sorry. I'll rephrase it. Strike that. So the Debtors not have some of those things like meetings and review websites in the FTX transaction?

A We did. I would characterize the scope of the diligence as being broader in this instance. We, you know, had multiple meetings with them. We -- and we had multiple meetings with FTX as well, right? But I would just characterize the breadth and duration and scope of the diligence as being much higher.

Q How so?

A So we asked for walk throughs, for example, of wallet infrastructure relating to how assets are custodied and, you know, seeking additional assurances. We sought a sworn statement from the company relating to this. We didn't do

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have been in the FTX transaction.

Q Any other, you called them incremental steps that the Debtor took in connection with the due diligence of Binance.US that it didn't take with FTX?

A I -- we've discussed a lot of them. I don't recall anything else. I'm sure there was. I just don't recall anything else off the top of my head.

Q So slightly pivoting to a related subject, in Paragraph 32 of your declaration, you discuss certain supplemental diligence and I think you sort of seem to -- well, you touched on it a little bit today. When did the supplemental due diligence begin?

A I would characterize the -- so do you mind, I'm going to turn to this. This relates to the Merit Peak work.

Q Okay.

A Is that the right paragraph?

THE COURT: Yes.

BY MR. UPTEGROVE:

Q All right, I don't -- turn to it. Paragraph -- it's Paragraph 32.

A So yes, I'm looking at that now. So the supplemental due diligence related to, you know, upon the publication of the Reuters article relating to, you know, a perceived relationship between Merit Peak and Binance, in particular Binance.com and CZ and Binance.US, upon seeing that, we

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reached out to Binance.US and its advisors. We scheduled diligence conversations to engage with them and a better understanding of the nature of the allegations, as I think outlined -- and that included multiple telephonic and Zoom meetings as well as in person meetings relating to reviews of trade data.

And to be clear, this was not a -- just a Moelis set of supplemental diligence. This included meetings of Moelis, Kirkland, BRG, FTI, McDermott all participated in to review enhanced documentation around the nature of the relationship and in particular with regards to the allegations that were made, you know, the concern would be that to the extent that there was a withdrawal of, for example, customer funds that would obviously be very concerning from the Debtors' perspective.

And so the diligence that we performed and information that we received, you know, largely seemed to indicate that the flow of funds relating to these transactions were on offsetting basis. So in this context, it would be, you know, a market maker depositing value on a platform and then withdrawing cash on the back end. We understand that to be in the typical scope of what market makers do. But I want to be clear, this isn't a -- you know, we're not done with our diligence on this. We continue to do diligence. We had a meeting with them Wednesday and had the hearing Thursday.

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transaction?

A Are you asking, is there specific open due diligence items prior to February 16th? I'm not sure I understand --

Q Correct.

A I don't recall specifics. I know that there were, I just don't recall specific items.

Q Regarding the supplemental -- excuse me, the supplemental due diligence that's now ongoing, what's the scope of that due diligence?

A I think it would largely relate to, for example, you know, continued work relating to the Merit Peak allegations. We need to receive, I think we're still waiting on the audited year-end financial statements, for example. We will continue to and are seeking to have a discussion with the company relating to the letter that was put forward yesterday by the three senators.

We will need to have additional discussions relating to the tweets that were put out this morning by CZ and we will continue to evaluate various articles and news publications. And you know, any allegations that remain with -- to the extent that there are additional allegations, we'll continue to make sure that we get assurances relating to any allegations that are made around the nature of the operations. And then I think we would also seek --

Q What about current ongoing due diligence --

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We'll continue to have discussions with them and as I think I said, we have a plan that allows for a toggle approach. We will not -- we will confer and seek to review and make sure that parties are comfortable prior to executing any transaction and to the extent that we're not, we would seek to execute the toggle that the plan allows for.

Q When did that Merit Peak article come out? Do you remember roughly?

A I don't. I think it was February 16th, is what it seems to be.

Q The -- what's dubbed in your declaration as the supplemental due diligence would have started February 16th or shortly thereafter?

A Yeah, as it relates to the specific item, that's correct.

Q Was there something else that -- was there other ongoing due diligence at that time?

A We were performing and can continue to have conversations with Binance over the course of -- from when we began in discussions with them post the collapse of FTX through as early as I think 9:55 this morning.

Q As of February 16th, or thereabouts -- or excuse me, let me rephrase that. Before February 16th, what was left in regard to the due diligence in the -- for the Binance

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A -- to do kind of bring-down due diligence session ahead of any closing.

Q I'm sorry, what is a bring-down due diligence or whatever -- what'd' you call it?

A A bring-down due diligence. So this is oftentimes an analysis that is done in connection with, for example, public M&A transaction or a general M&A transaction where the advisors will have a discussion with the counterparty relating to assurances of a range of factors, for example.

So oftentimes the bring-down due diligence will include basically a update and verification of prior diligence assurances that have been made by the counterparty to assure that they are currently still in compliance with that. So for example, oftentimes a bring-down due diligence session will seek to get assurances from a counterparty relating to the fact that they're not having any issues relating to being a going concerns from their auditor. That's a very common bring-down due diligence item.

Q Does the current diligence include a review of procedures and controls relating to the security and custody of crypto asset?

A I think we've answered that question.

Q I'm sorry, I apologize. I missed it. Could you answer the question?

A So I think we'll continue to perform work relating to

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the nature and protocols that Binance.US uses relating to the custody and wallet infrastructure, to the extent that's the question, and we would seek assurances in advance of any close relating to such, even prior sworn statements that we received.

Q Could the current diligence impact the date of the closing?

A Excuse me, I wasn't able to hear you.

Q Could the current due diligence impact the date of the closing?

A Absolutely.

Q How so?

A We -- so as I think we mentioned, we would anticipate closing probably in the range of three to four weeks from approval of the plan. There's still work that needs to be done from the Debtors' perspective in order to be able to prepare for the closing of the transaction, that includes its ability to, for example, meet the requirements under the rebalancing ratio and work that needs to be done around that. There's operational work that would still need to be done from an integration and transfer perspective.

So there's a lot of work that obviously needs to be performed in advance of a closing. So that's not something that would occur immediately. We plan to continue to perform due diligence in advance of a closing and to the

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Additionally, the other consequence would really be around the ability for certain creditors to receive in-kind distributions relating to the 35 tokens that are unsupported, and so there may be, for example, adverse tax consequences associated with those 35 coins which would need to be returned in cash as opposed to on an in-kind basis.

Q Turning back to your declaration, in Paragraph 42, you state that you're not in a position to vouch for the bona fides of Binance.US. What did you mean by that?

A So what I mean by that is that we have received assurances from Binance.US. We've received sworn testimony from them. But you know, as an organization, for example, we're don't do forensic audits from a detailed books and records perspective, right. To the extent -- and I think what we were getting at is to the extent that they were perpetuating a fraud, I don't think we would be in a position to be able to say such.

Q At the end of that paragraph, you state, "And if events since May 2022 have taught us anything, it is that the benefits of having a decentralized and largely unregulated cryptocurrency business are counterbalanced by the challenges in identifying and preventing fraud." What did you mean by that?

A So what I meant by that is specifically as it relates to items like what happened with FTX. So from a

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extent that there were issues that were raised in -- prior to that period, in advance of closing that caused concern, we would have two options. We would either -- and we would do this in consultation with the UCC, to be clear. This would not be just a Moelis decision.

We would confer with our board of directors. We would confer with various professionals. We would confer with the UCC and advisors. And to the extent that parties felt that it was worth, for example, delaying a close by a week to understand whether or not it made sense to run down and get assurances relating to any new issues that arose during that period, we would evaluate that relative to the self-liquidating transaction and whether it would make sense to pivot towards a toggle in that instance.

Q In the case that the Debtor had to pivot to the toggle, what would be the consequences for customers and creditors?

A So the consequences in that instance, as I think we outlined in the declaration, are that there would be an estimated reduction of value of approximately \$100 million. Additionally, in that instance, it would likely result in a delay relating to the implementation of such a plan. So operationally, there's just some additional work that would ultimately need to be done before the platform would be in a position to be able to reopen and make sure that we had all of that work in place.

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decentralized perspective with regards to cryptocurrencies, one of the benefits is the ability to track and validate transactions as they occur on the blockchain. It's -- the primary use case for it is that you see exactly what is occurring from a transfer perspective and it's public and anybody can see that.

That said, you know, with the emergency of additional exchanges and the way that, for example, omnibus wallets work and inherently have to work in a lot of ways on these exchanges, you know, it's difficult to see what activity is occurring within the exchange itself and, you know, I would also say the industry itself is evolving in real time in a lot of ways. So, you know, for example there aren't really clear industry standards relating to what appropriate due diligence is for these types of businesses.

Federal regulators haven't put forward views and we do understand that they are coming out in real time and we do follow this, but you know, there is not a set of legal standards, for example, that firms need to operate in that operate in the space around, for example, like federal banking, safety, and soundness standards. It's not a concept that, you know, we would be able to rely on. So that presents unique challenges when diligencing any business in the cryptocurrency ecosystem, whether that's Binance.US or any other party, just given the lack of

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standards and how new the ecosystem itself generally is.

Q Why should the Court confirm the plan before the Debtors finish ongoing due diligence?

A So the plan allows for an option for the Debtor to be able to pivot to a toggle transaction to the extent that that's in the best interest. The Debtors would take that very seriously, as I think I said at the beginning. You know, at this point, I wouldn't say, you know, we are fully in a position to say that we would move forward with Binance.US.

We're still continuing to perform due diligence. We take the allegations in public information that's out there very seriously and this is not a decision that we would take lightly. We would continue to perform work and up until the point where we push a button to try and close, we would continue to perform work in the best of our abilities around those dynamics.

Q Are there any external constraints that are causing the Debtor to need to confirm the plan now as opposed to waiting to see if everything works out in due diligence?

A So as it stands now, we have a plan that has overwhelming support from creditors who are looking to get their cryptocurrency back as expeditiously as possible. You know, I understand and I'm not a lawyer. My understanding is that to the extent that we were to, for example, delay a

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A So do you mind repeating that again? I apologize, because I may not follow it.

THE COURT: He's asking --

BY MR. UPTGROVE:

Q Sure. Are there --

THE COURT: -- is there anything forcing the confirmation to happen on the current timeline? Are there any external factors; why do it now? That's what he's asking.

BY MR. UPTGROVE:

A I think that's a legal question. I'm not sure I'd be in a position to answer it. I'm not an expert on how plan confirmation worked in timing of such. You know, we have a plan today that we believe is, in my mind, has overwhelming support and we would seek to, you know, get it approved to allow for these options.

Q There's no issue of the Debtor running out of money in the next three or four weeks?

A Given the rebalancing transactions that have occurred to date, I don't believe that there would be any monetary constraints. You know, that -- it does result in a real cost, though, to creditors from a potential recovery perspective to the extent there are delays. It was a very important point from our perspective to be able to try and move a case forward, to be able to move and allow for

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plan confirmation, irrespective of whether it's a toggle plan or not, it would further delay the ability of these customers to be able to receive their funds. It would have incremental costs associated with it.

And in our minds, you know, this provides for that optionality and the decision would be made, and again, not just by Moelis, but by the -- a range of parties ultimately, in their judgment around the ability to feel comfortable moving forward under those facts and circumstances. So we have a plan that we believe is confirmable today. It has overwhelming support of creditors.

It allows for a backup option and that's a critical component. That was something that we attempted to negotiate for in FTX and were ultimately blocked. It was a very contentious negotiation. So we believe, you know, those safeguards are critical to this plan and the ability to move it forward as is.

Q I don't think that answered my question. Are there any external factors that necessitate the Debtor confirming the plan on the current timeline?

MR. SLADE: Your Honor, I object. He just answered it, to the extent he didn't it's because the question is vague.

THE COURT: I'll allow the question. Go ahead.

BY MR. UPTGROVE:

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distributions of funds back to creditors as quickly as possible. It's been a very key consideration from our perspective, from the onset of the bankruptcy proceedings.

Q What would cost be -- delay it?

A So I don't know the exact answer. I think it would depend on the facts and circumstances of how long the delay is. I'm generally aware of what the cost is from the estate perspective, kind of approximately \$10 million dollars a month, but I can't speak to the exact specifics based on the nature of the questions. And I think it would also depend on, you know, if the concern is, how long would it take to ultimately feel comfortable with Binance before moving forward, I think it depends on what happens at that future point in time. Like, it's in part asking about a future unknown, depending on what information is learned or what happens over that time period.

Q But you haven't done any analysis to determine the exact cost of two-week delay, a three-week delay, a four-week delay?

A I think a multi-week delay, as I mentioned, it's, you know, from an estate perspective, it's approximately \$10 million a month. I can't speak to, you know, specifics based on that analysis. I'd have to -- I'd have to run the numbers, to be candid. I don't know.

Q That's the question. You didn't run the numbers.

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1 A I -- so we've run analysis relating to this specific  
2 plan. You're asking about a hypothetical scenario that I'm  
3 not in a position to be able to answer right now.

4 Q Are you aware of any covenants that would be breached  
5 or be noncompliant with if the Debtor didn't close on the  
6 current timeline?

7 A So I would need to review the specifics in the APA. I  
8 do know that there are outside dates, for example. I know  
9 that there are, you know, requirements from the Debtors'  
10 perspective to be able to try to and move expeditiously. I  
11 don't recall the exact dates, though, based on the specifics  
12 of the APA.

13 THE COURT: Can I just ask, counsel must know  
14 this. There is a requirement that the Debtors move as  
15 expeditiously as they reasonably can to get confirmation,  
16 isn't there?

17 MR. SLADE: Yes, there's a milestone specifically  
18 of March 6th for entry of the confirmation order. That's  
19 Monday. That's Section --

20 MR. UPTEGROVE: What happens if --

21 MR. SLADE: That's Section 8.1(i)(iv) of Exhibit  
22 9.

23 THE COURT: That's a requirement that in Binance -  
24 - does the deal end automatically or Binance has the right  
25 to terminate if that's not --

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1 think, previously discussed in the hearings, the APA does  
2 provide for the crypto to be treated in a trust and custody  
3 relationship upon its transfer to Binance.US in -- during  
4 each of those interval periods.

5 Q You mentioned the KYC requirements. Are there any  
6 other steps that users need to take to access their assets  
7 on Binance platform?

8 A I don't know.

9 Q Is there anywhere users can go to read about what they  
10 need to do to access their assets?

11 A I believe it's outlined in the customer migration  
12 protocol and I know that there have been communications that  
13 the Debtor has sent to creditors, but I can't speak to the  
14 specifics of those.

15 Q Do you know if there's a place right now, if creditors  
16 on the line, that you could tell them where they need to go  
17 to find that information?

18 A I don't recall.

19 Q Under Section 6.12 of the APA, if users do not satisfy  
20 certain requirements within three months, then Binance.US  
21 can convert those users acquired coins into U.S. dollars at  
22 the then then prevailing rate; is that right?

23 A I don't have the APA in front of me, but what you're  
24 describing is -- sounds consistent with my understanding of  
25 how that works.

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1 MS. OKIKE: Right to terminate.

2 MR. SLADE: That's it. correct. Right to --

3 MS. OKIKE: Right to terminate.

4 THE COURT: Binance has the right to terminate if  
5 that isn't done?

6 MS. OKIKE: And I believe it triggers their  
7 expense reimbursement. Yes --

8 MR. UPTEGROVE: May I proceed, Your Honor?

9 MS. OKIKE: It does trigger their expense --

10 THE COURT: Go ahead. Continue with your  
11 questions, please.

12 MR. UPTEGROVE: Thank you, Your Honor.

13 BY MR. UPTEGROVE:

14 Q Mr. Tichenor, I'm going to move on to a new subject  
15 which is user withdrawals and customer access. Under the  
16 plan and APA, when will users to be able to access their  
17 assets? My understanding is that users will be able to  
18 access their assets?

19 A My understanding is that users would be able to access  
20 their assets upon signing up and going through KYC  
21 procedures to become a customer of Binance.US. Upon closing  
22 and in subsequent one-week intervals, crypto would transfer  
23 as users migrate and sign up. Upon crypto having been  
24 transferred, I believe the APA requires that it be deposited  
25 into customers' accounts within a five-day period and as, I

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1 Q Would somebody would be able to give you a copy, just  
2 because I have a couple questions about that. It might be  
3 helpful to have it in front of you as we talk.

4 MR. SLADE: You want the amendments of the  
5 original APA?

6 MR. UPTEGROVE: The original.

7 THE COURT: You can give him that, but we're going  
8 to take a ten-minute recess at the moment, and then you can  
9 continue your questions after our ten minutes.

10 (Recess)

11 THE COURT: Please be seated. Okay. Does the SEC  
12 wish to continue with its cross examination?

13 MR. UPTEGROVE: Yes, Your Honor. Thank you.

14 BY MR. UPTEGROVE:

15 Q Mr. Tichenor, I believe we left off speaking about the  
16 APA, in particular Section 6.12 of the APA which I think  
17 provides if users do not satisfy certain requirements within  
18 three months, then Binance.US can convert the user's  
19 acquired coins into U.S. dollars at the then prevailing  
20 rate. Is that correct?

21 A That's correct.

22 Q What happens to the value of the users accounts if the  
23 price of the crypto assets in those accounts declines during  
24 the three-month period?

25 A So the way that the plan works is that the distribution

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1 is effectively made at the time of closing, which relates to  
 2 the amount of crypto that a customer would get under their  
 3 pro rata share relative to the rebalancing ratio and the  
 4 size of the initial distribution versus their claims on a  
 5 prepetition basis. So in this instance, we would view the  
 6 distribution as effectively having occurred at the time of  
 7 closing of a transaction, regardless of whether that  
 8 customer is ultimately migrated to the Binance.US platform.  
 9 And so whether the period is after the three-month period or  
 10 even any period post the rebalancing date, those users are  
 11 exposed to potential fluctuations in the price of  
 12 cryptocurrencies to the extent that they wish to monetize  
 13 them.

14 Q How will creditors learn about the closing when it  
 15 happens?

16 A So I believe under the customer migration protocol  
 17 that's addressed. We actually have some outstanding  
 18 questions around that relating to whether or not there would  
 19 be, for example, like an automatic email that would be sent  
 20 to customers through the Binance.US platform once the crypto  
 21 has been deposited into the account. It's currently an  
 22 outstanding question.

23 Q If Binance.US were to send a notice out, would that  
 24 also apply to creditors or users who haven't yet registered  
 25 on the Binance.US platform?

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1 Q Yes.

2 A so --

3 Q Yes.

4 A My understanding is that to the extent that CFIUS  
 5 blocks a transaction prior to closing, we would be unable to  
 6 close with Binance.US and in that instance, presumably, we  
 7 would pivot to a self-liquidating toggle scenario at that  
 8 point.

9 Q What happens if it denies the approval after closing?

10 A I don't know the answer to that. That's a legal  
 11 question.

12 Q You haven't been party to conversations in which that's  
 13 been discussed?

14 A CFIUS is a very technical legal element. I'm not a  
 15 CFIUS expert.

16 Q So then you wouldn't know the impact on creditors if  
 17 CFIUS was to deny approval of the transaction after closing?

18 A I do not.

19 Q Are you familiar with the term user asset migration  
 20 date as it's used in the APA?

21 A I may need to refamiliarize myself. Do you mind?

22 Q Sure. I think -- it is on Page 85 of the document.  
 23 It's four U's and it refers back to user migration  
 24 preparation on a previous page. You see that?

25 A I see that.

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1 A I don't know.

2 Q If there's something else that, material event happened  
 3 during the course of post-closing or you know, through  
 4 closing, before closing, if there's a material event that  
 5 happened, is there a way to communicate that to creditors?

6 A I don't know.

7 Q The Committee on Foreign Investments in the United  
 8 States, AKA CFIUS, is conducting a review of the Binance  
 9 transaction. Is that right?

10 A That's my understanding.

11 Q And the review remains ongoing?

12 A That's my understanding.

13 Q Does the Debtor know what the outcome of that review  
 14 will be?

15 A I personally do not know.

16 Q What if CFIUS denies approval of the Binance  
 17 transaction? What would happen?

18 MR. SLADE: Your Honor, I object. That calls for  
 19 a legal conclusion.

20 THE COURT: Well, do you know the answer to the  
 21 question?

22 BY MR. UPTEGROVE:

23 A To the -- I guess the question would be, to the extent  
 24 that CFIUS blocks the transaction prior to closing? Is that  
 25 correct?

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1 Q Can you explain what the user asset migration date does  
 2 in connection with the APA?

3 THE COURT: What does this have to do with any  
 4 objection that's been filed? I mean, you're asking him an  
 5 awful lot of questions and taking up a lot of our time to  
 6 get information that if you'd read the documents on file,  
 7 you'd already know the answers to. So what is the point of  
 8 this?

9 MR. UPTEGROVE: The point is, I think it's  
 10 Paragraph 7 of our objection, is what economic benefit this  
 11 has, the transaction has to creditors and this issue goes to  
 12 whether or not there's an economic benefit for the creditors  
 13 at the timing of the transaction when people will be -- the  
 14 assets will be available, when they won't be available,  
 15 whether people will be paid, how they will be paid.

16 THE COURT: But we've already had testimony and  
 17 we've already had descriptions in the disclosure statement  
 18 that we'll have a closing. There'll be a migration. When  
 19 people are ready on the Binance platform, they get  
 20 distributions. If they're not ready within three months,  
 21 they get cash. What else do you need? What do you want him  
 22 to try to pinpoint it to nanosecond?

23 MR. UPTEGROVE: I'm not at all clear that's the  
 24 case, Your Honor. If you -- so the question is, all I  
 25 really wanted to know from him is what -- I don't understand

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1 it, Your Honor, but the user asset migration date, I've  
2 heard a lot of people talk about the five days. I don't  
3 understand how this -- I have read it, Your Honor, and I  
4 haven't understood how this user asset migration date  
5 corresponds to the five day and the rollout, the weekly  
6 rollout.

7 And so all I wanted to get from this witness is  
8 how if at all does this asset migration date impact the  
9 user's ability to withdraw and what's already been on --  
10 people have testified about.

11 MR. SLADE: Your Honor, perhaps I could --

12 MR. UPTEGROVE: That's all I want to do.

13 MR. SLADE: We would've been happy to field  
14 questions about this from the SEC had they asked us before  
15 this hearing. If they look at the amendment, that  
16 definition, user asset migration date actually has been  
17 deleted and it's been replaced by a separate definition  
18 called asset migration date which describes it in some  
19 detail. So if you look at the exhibits that are online that  
20 we uploaded, you'll be able to answer that question. I'm  
21 not sure if the witness can.

22 MR. UPTEGROVE: That's helpful. Thank you. So we  
23 can move on.

24 BY MR. UPTEGROVE:

25 Q Mr. Tichenor, are you familiar with the terms of use

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1 I think obviously to the extent that there was a halting of  
2 trading, that would be a material event from the debtor's  
3 perspective in determining whether or not it would send  
4 funds to Binance.US.

5 Q I guess the question was, since you're -- you don't  
6 recall that specific provision in the terms of use, you're  
7 not aware of any specific provision that would limit the  
8 discretion or halting trading or access to the platform?

9 A I'm not.

10 Q Different subject --

11 A I would say that, look, that is something that we  
12 track. If we were aware that there was halting of trading  
13 on the platform, as I said, that would be a very material  
14 concern from Debtors' perspective with their willingness to  
15 move forward with this counterparty.

16 Q Are you going to track it after the deal closes?

17 A I -- prior to each subsequent distribution, I believe  
18 that there will be parties that will be looking at that,  
19 yes. I mean, it -- and by the way, that's not just Moelis.  
20 That would be the liquidating trustee who would be executing  
21 transfers, management team. There's, you know, each bulk  
22 transfer that occurs is not a simple process. It's manual  
23 in a lot of ways. And so, you know, there's an expectation  
24 of in-depth material coordination between the Debtor and  
25 Binance.US post any closing in order to, again, continue to

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1 for the Binance.US trading platform?

2 A The terms of use? Excuse me, I just couldn't hear you.

3 Q Yes. Yes, the terms of use for the Binance.US trading  
4 platform.

5 A I'm broadly familiar with it. We -- I have read it.  
6 That's an item, too, where you know, we're discussed that in  
7 connection with counsel which is better situated to be able  
8 to opine on any legal matters associated with terms of use  
9 than I would be. But yes, I have read it.

10 Q Are you aware that pursuant to the trading portion of  
11 the terms of use, Binance.US in its sole and absolute  
12 discretion may halt trading or restrict access to the  
13 trading platform?

14 A I don't recall that specific provision.

15 Q So you wouldn't recall, you don't know if there's  
16 anything in the APA that would limit that discretion.

17 A I don't recall. I know in the APA we have protections,  
18 for example, around to the extent that there is a halting of  
19 trading on the Binance.US platform, that it allows the  
20 Debtor to, for example, not send funds or provides the  
21 liquidating trust, I believe, the option to not use them for  
22 purposes of distributions. And broadly speaking, and again,  
23 I don't recall the exact specific sections.

24 I recall that there was discussion around, for example,  
25 you know, halting of trading and concerns that would have.

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1 migrate on the weekly basis.

2 And so to the extent that parties were aware, for  
3 example, of a halting of trading prior to any of those  
4 subsequent migrations, I would be -- I would highly, highly  
5 doubt that parties would move forward with continuing to  
6 transfer subsequent funds in that instance, for example.  
7 But look, it's a fact and circumstance specific, too, so.

8 Q Just to be clear, so if after the closing, there's a,  
9 you know, shortly after the closing, there's a run on the  
10 bank so to speak, and Binance in its discretion halts  
11 trading, what if anything could the Debtors do?

12 A Well, I think at that point -- and I think there are a  
13 couple of points in there, to be clear.

14 One, one of the important elements, you know, from the  
15 Debtors' perspective when performing the diligence was  
16 assurances, for example, around the fact that they have one-  
17 to-one reserves. And so one of the things that we had  
18 thought about was, you know, the ability to, for example,  
19 support a run on the bank. Theoretically can't have a run  
20 on the bank for a business that's only has one-for-one, you  
21 know, kind of -- I'll call it, acts as like a cashbox to a  
22 degree, right, in custody capacity like that. So that was  
23 an important element.

24 Two, you know, there could be reasons that are  
25 explainable that I can't think of right now relating to why

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there could be theoretically a justification for halting of training that would still justify people feeling comfortable moving forward. You know, if there was a technical glitch with a cloud provider that resulted in an issue that was only temporary for a very short period of time. Like there are countless hypotheticals I that can't necessarily speak to, but to the extent there was a halting of trading, it would be a very important element for purposes of the Debtor at that point.

And I think that would they continue to transfer funds over? In all likelihood no, if there was a real concern around what the basis for that was, and that's a pretty low threshold for what that concern level would ultimately be to the extent you're talking about something as severe as a halting of trading on a platform.

Q Switching gears a little bit, if Binance.US was determined to operate as an unregistered securities exchange, what impact would that have on the Voyager customers who moved over from the Binance -- or excuse me, yeah, the Voyager customers who moved over from to the Binance platform?

MR. SLADE: Your Honor, I object. That calls for a legal conclusion.

THE COURT: Do you have any ability to answer that question?

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asked whether or not, for example, there are pending litigations or investigations relating to Binance.US, the answer to that is yes. We did ask. We had a number of conversations relating to various pending investigations for the -- relating to the purchaser. If that's the extent of the question.

Q What did they disclose?

MR. SLADE: Your Honor, I object. This is not relevant and it seems like --

THE COURT: Overruled.

BY MR. UPTGROVE:

A So they disclosed that there were investigations ongoing from several various federal agencies. They disclosed to us that they had provided, for example, written documentation to those the parties relating to requests and inquiries made in connection with those investigations. We were not aware of any actions that were ongoing relating to Binance.US, but I can't speak for anything beyond that. I'm not aware of any, you know, pending for example, lawsuits against Binance.US by a federal agency./

Q With respect to the government investigations, what did they disclose?

A That was subject to confidentiality. I'm not sure I can discuss that. I mean they -- I think I tried to mention what I could, which was that they provided us information

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THE WITNESS: I do not.

THE COURT: Okay.

BY MR. UPTGROVE:

Q Mr. Tichenor, can you go to paragraph -- or Section 4.7 of the APA, please?

A Is this -- this is the nonamended version? No litigation?

Q Yeah. Is there an amended portion of this?

A No, I'm just making sure I'm referencing the right exhibit.

Q Do you see that provision?

A The knowledge qualifier?

Q Well, just to make sure we're looking at the same thing, on my 4.7 it says, "No litigation. There are no actions pending or to the knowledge of purchaser threatened against or affecting purchaser that will materially and adversely affect purchaser's performance under this agreement or purchaser's ability to consummate the transaction." Are we looking at the same thing?

A I see that paragraph, yes.

Q During the course of due diligence, has Binance disclosed to the Debtors or have the Debtors learned of any material or any actions pending against Binance.US?

A To the extent the question relates to -- excuse me. To the extent the question relates to whether or not the Debtor

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relating to the nature of the injuries. They provided us disclosure. And these were discussions that we had, that we participated in with multiple sets of counsel including Binance.US' counsel on various matters. We're aware that they had provided information to various agencies in connection with those requests. And that's what we're aware of.

Q So your understanding is that the identity of the governmental agencies investigating Binance.US is covered by a confidentiality agreement?

A I'm aware of various federal agencies doing investigations. I -- speaking to every single one of them right now, trying to recall them off the top of my head, I have difficulty, but I'm aware of some major financial agencies such as, you know, the SEC and other parties that I think are public information around the nature investigations, you know, and when we deal with financial companies, generally speaking, it's not uncommon for us to see situations where, you know, there are various inquiries that various federal regulators and state regulators may make in connection with parties that they regulate.

Q You said that they disclosed that the SEC had an investigation relating to Binance?

A They did.

Q What did they say?

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1 A That they had received requests relating to information  
2 on relationships, for example, with third parties and  
3 certain affiliates.

4 Q Anything else?

5 A I don't recall. That conversation took place a while -  
6 - long enough ago that I just don't recall the exact  
7 specifics. I'd have to reference my notes.

8 Q When did it happen?

9 A Probably in -- I would say it was -- I know it was  
10 prior to the signing of the APA and I think we've had some  
11 continued ongoing discussions with them relating to these  
12 members. It's not a static element, but I just don't recall  
13 the exact dates.

14 Q So you knew prior to entering into the APA that there  
15 was investigation by the SEC of Binance?

16 A We were aware that they had requested information and  
17 that they -- that there was an investigation, yes.

18 Q Have they updated you on the status of the  
19 investigation?

20 A I don't believe probably within the last couple weeks,  
21 but I just don't recall, candidly.

22 Q The Debtor, do the Debtors view that, those  
23 governmental investigations as important matters?

24 A We did.

25 Q Did the Debtor understand the nature of the

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1 moving forward with them. As we evaluate -- to the extent  
2 that we moved forward with the plan, we got approval for it,  
3 and prior to closing we were evaluating the risk adjusted  
4 elements of moving forward with a transaction with  
5 Binance.US relative to the tradeoff and the costs associated  
6 with self-liquidating toggle. That would be one of the  
7 potential considerations. Absolutely. If there was a  
8 material change, for example, that would obviously be a  
9 consideration. It's very hard to say what that will look  
10 like in three to four weeks.

11 Q At any time since the entry into the APA has Binance.US  
12 informed the Debtor that there's been some material change  
13 in any of the government regulatory investigation?

14 A Not to my knowledge, but counsel may have participated  
15 in calls that I wasn't on.

16 Q What if anything have the Debtors disclosed about any  
17 of the investigations that it has learned during the course  
18 of due diligence?

19 A Do you mind repeating the question?

20 Q Yes. What if anything have the Debtors disclosed about  
21 the government investigations that it has learned about  
22 during the diligence?

23 A I don't recall what the disclosure in the plan  
24 disclosure statement is relating to any of that.

25 Q Do you think that the status of government

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1 governmental investigation?

2 A We understood the nature of what the requests related  
3 to. We asked questions relating to -- and follow-up  
4 questions relating to the nature of what the inquiries were,  
5 what information was provided, what the status of those  
6 pending discussions were, whether or not there were follow-  
7 up requests, for example, compliance. So we asked a number  
8 of questions relating to any -- relating to those  
9 investigations and proceedings, yes.

10 Q Did Binance.US share any documentation with the Debtors  
11 concerning those governmental investigations?

12 A They may have with counsel. It's highly unusual for  
13 investment bankers to ever receive information relating to  
14 communications between a regulator and a counterparty.  
15 Worked on a number of financial institution related  
16 situations and generally those reviews being privileged, so  
17 it's highly atypical for us to see primary documents  
18 relating to those investigations, as non-lawyers.

19 Q How did those -- understood. How did those  
20 investigations relate to the Debtors' ongoing due diligence?  
21 Is that anything that the Debtors are considering?

22 A Yeah, we -- yes. We would obviously consider any  
23 changes relating to ongoing investigations that we became  
24 aware of from a federal agency as material facts potentially  
25 in assessing the counterparty and the risks associated with

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1 investigations is a relevant consideration for creditors in  
2 voting on the plan?

3 MR. SLADE: Your Honor, I would object. Lack of  
4 foundation.

5 THE COURT: He can answer.

6 BY MR. UPTGROVE:

7 A To the extent that I think it would depend on what the  
8 nature of those investigations are and whether or not those  
9 relate to, for example, normal course investigations or  
10 they're criminal proceeding investigations, for example,  
11 against the company, I think it's a bit of a question that  
12 depends a lot on the nature of what the facts and  
13 circumstances are. I think it's hard to say in the absence  
14 of -- it's a very broad question.

15 Q Do you believe that the Debtors have disclosed all  
16 material facts to creditors about ongoing investigations and  
17 litigation?

18 MR. SLADE: Yeah, Your Honor, I object. That --  
19 his opinion on that is not relevant and also the SEC did not  
20 object on this basis.

21 THE COURT: Well, it would be troubling if his  
22 opinion was no, but, you know, he's obviously not being  
23 asked as a lawyer or as an ultimate fact finder, but do you  
24 think the Debtors have failed to comply with their  
25 disclosure obligations?

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THE WITNESS: I hope that the Debtors have not failed to comply with disclosure obligations, Your Honor. We have spent countless hours working with counsel to make sure that, you know, we're properly disclosing key considerations related to the plan. Again, it's a very long document and so for me to reference a very specific element of it in a very specific question, I just don't recall the specifics of it, but yes, I mean, I believe that the Debtors have sought to disclose important information in connection with the plan. And I don't think --

MR. UPTEGROVE: That's all the questions I have.

THE WITNESS: -- we would be here today looking for approval on that basis, to the extent that we felt like there were any deficiencies.

MR. UPTEGROVE: Thank you, Mr. Tichenor. That's all I have. Thank you.

THE COURT: All right. Is there anybody else on the telephone who would like to cross examine --

MS. RYAN: Yes.

THE COURT: Okay.

MS. RYAN: Good afternoon, Your Honor. This is Abigail Ryan with the State of Texas Attorney General's Office on behalf of the State Securities Board and the Texas Department of Banking.

CROSS EXAMINATION OF BRIAN TICHENOR

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Q Who would liquidate 35 coins --

A Yeah.

Q -- that aren't supported?

A Look, I think that is a -- it's an unknown at this point. As I was saying, I think the Debtor would seek to maximize value for the estate in connection with any transactions that would need to occur on those coins. It would be at the Debtors' discretion.

THE COURT: There's a bit of confusion built into the question when you ask who would liquidate. Are you asking who would decide how to sell and to whom or are you asking to whom coins would be sold? There's a difference.

MS. RYAN: I'm asking who would do the selling.

THE COURT: Okay. So would voyager do the selling or would it ask somebody else to do it?

THE WITNESS: Yeah, so -- and I think this relates more broadly to the rebalancing transactions. We have worked hand-in-hand with the UCC in connection with the rebalancing transaction and have been in full agreement with them to date around the nature of various third-party proposals that we received, for example. And I mention this because it's broadly consistent with how a liquidation of those 35 coins would ultimately work, is that it would be in consultation with the UCC. We would in all likelihood, is the Debtor would seek to get third-party potential

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BY MS. RYAN:

Q Good afternoon, Mr. Tichenor. And one thing, I've heard your name said Tichenor and Tichenor. What is the correct pronunciation?

A It's Tichenor. Thank you.

Q Okay. That's important.

A A lot of times, people say Tichenor which is not a --

Q Thank you for letting me know. Names are important. So good afternoon, Mr. Tichenor. I just have a few (audio drops) and I want to clear up a couple of things. In your declaration that was filed, it stated that if you went to the toggle plan, Binance would help in liquidating the coins, but earlier you testified Voyager would liquidate it? who would be liquidating it under the toggle plan?

A Liquidation of the 35 unsupported coins?

Q Just all the coins. So if somebody else is doing the 35 and somebody else is doing the remainder who are those companies?

A Well, I don't believe that there would be any other companies that would do the remainder. I think -- are you referring to, like, a seven situation where there would be like --

Q Oh, no. I can be more clear. Under the toggle plan who liquidates the 35 coins?

A Who what?

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proposals. It may seek to liquidate them itself using its existing smart order router or third party systems that it has access to. So I don't know the full answer yet. I think it would depend on the specific facts and circumstances of the situation and what the collective agreement was between both parties to move forward on that basis.

THE COURT: But there's no plan to say --

MS. RYAN: Okay, so --

THE COURT: There's no -- for example, you're not planning in the event of the toggle plan to say, here Binance, here's all our crypto, sell it for us?

THE WITNESS: Absolutely not, Your Honor. Yeah.

THE COURT: Okay. That's what I think the implication of the question was. got it.

MS. RYAN: Thank you, Your Honor. That was exactly right.

BY MS. RYAN:

Q So in Paragraph 37 of your declaration it says that the asset purchase agreement provides that in the event Debtors pivot to a liquidation transaction, Binance.US will provide certain services to facilitate the liquidation transaction to ensure the Debtors can rely on the Binance.US platform to minimize leakage with cybersecurity risks when returning cryptocurrency to creditors. So in the toggle transaction,

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1 what are these services that Binance.US would provide?

2 A So I think what they have indicated is that they would  
3 be helpful in supporting services and facilitating and  
4 assisting in the transaction to the extent that it was  
5 possible. I think the specifics around what exact services  
6 they would provide, we haven't fully fleshed out in  
7 connection with them and I think that is, in our minds an  
8 add-on, right. It's not something that we necessarily have  
9 to do. It would be that they would offer services  
10 potentially to the Debtor, but it doesn't mean that the  
11 Debtor has to use those services.

12 Q Under the toggle transaction, would all (audio drops)?

13 A Sorry, I -- you were breaking up there. I apologize.

14 THE COURT: Somebody is bumping against a  
15 microphone. I don't know who it is, but anybody who's not  
16 actually asking questions right now, please mute your line.  
17 Please go ahead, Ms. Ryan.

18 MS. RYAN: Thank you. Can you hear me better now?

19 THE COURT: Yes, we can.

20 MS. RYAN: Thank you.

21 BY MS. RYAN:

22 Q So it's my understanding under the toggle transaction,  
23 all Bitcoin would be sold and reduced to U.S. dollars; is  
24 that right?

25 A Under the toggle transaction? No. I don't believe

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1 relative to what people may think of as a liquidation in the  
2 context of a Chapter 7 liquidation which is, insofar as in  
3 that instance, the majority of cryptocurrencies being the  
4 non-35 tokens that are unsupported from being distributed in  
5 kind would be distributed in kind.

6 So it's the same construct from a rebalancing  
7 perspective except the difference is that for the 35 that we  
8 can't distribute back, we need to distribute cash to those  
9 creditors instead on an equivalent value basis under the  
10 same construct. But the concept is still the same with  
11 regards to the way the rebalancing would work, so for  
12 example, for example, BTC is not liquidated. ETH is not  
13 liquidated. SHIB is not liquidated. Anything that is a  
14 supported token would not be liquidated. It would be  
15 rebalanced under the construct of the plan in a similar  
16 manner to Binance, the Binance.US deal.

17 Q That was really helpful. Thank you for that  
18 explanation. So it sounds like under the toggle  
19 transaction, unsupported jurisdiction customers could  
20 actually move theirs off and into a third-party wallet; is  
21 that right?

22 A That would be correct, yes. I believe -- to the extent  
23 --

24 Q Okay.

25 A -- they're allowed to (indiscernible) for Voyager as a

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1 that's the way the toggle transaction would work.

2 Q Can you explain to me how it would work?

3 A Yeah. So the toggle transaction is in many ways  
4 analogous to a transaction with Binance.US, but it has  
5 certain key differences and considerations and I would  
6 characterize those as being really relating to the fact that  
7 there are 35 tokens, for example, that cannot be distributed  
8 back to customers on an in-kind basis through the Voyager  
9 platform given the technical limitations that I think we  
10 discussed at the beginning of my testimony. And I'd be  
11 happy to discuss those further.

12 The other difference is that it would occur through the  
13 Voyager platform and would only be made available for  
14 withdraws over a limited period of time such that customers  
15 would have an ability to access and transfer that crypto  
16 from Voyager to a third party or a third-party digital  
17 wallet or self-custody wallet, for example. And then after  
18 a certain period of time, the platform would liquidate  
19 whatever had not been moved.

20 It would use the cash proceeds from those liquidations  
21 to distribute funds and then would effectively, you know,  
22 shut down for all intents and purposes. But those are the  
23 key differences. And so when you think about a liquidation  
24 transaction in this context, there is a big and materially  
25 key difference between a self-liquidating toggle transaction

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1 platform, yes.

2 Q Right. That -- fair enough. So under -- making the  
3 decision as to whether you go with Binance or do the toggle  
4 transaction, is that a unilateral decision on behalf of the  
5 Debtor?

6 A So I believe it would be a decision that ultimately  
7 would be made by the board of directors of the Debtor, but  
8 it would be in consultation and discussion with, for  
9 example, the UCC and, you know, presumably the advisors  
10 would be providing a recommendation for example, to the  
11 board. But it would ultimately, I believe, be a decision of  
12 the board of the Debtor.

13 Q Okay, thank you. Moving to the audited financials from  
14 2021, were you able to get any audited financials from 2020?

15 A I believe their audit covered two years, but I just  
16 don't recall. I apologize.

17 Q That's okay. Do you remember who the auditing firm was  
18 that did their financials?

19 A I do.

20 Q Who are they?

21 A I believe we're subject to confidentiality, but it's a  
22 large known audit firm in the techs ecosystem. I mean, I  
23 can answer it to the extent --

24 Q Okay. Do you know -- I'm sorry, I didn't catch that  
25 last part.

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1 A I was saying, I could answer that to the extent the  
2 judge wanted me to, but we were subject to confidentiality.  
3 Q Okay.  
4 A I don't know if Binance is okay with that.  
5 Q I understand. Do you know if Binance currently has an  
6 accounting auditing firm?  
7 A Yes, they made a representation to us that they have a  
8 new auditor and we understood that their relationship with  
9 their prior auditor, that they had been in the process of  
10 transitioning to a new auditor in advance of the collapse of  
11 FTX. So the change in auditor was not something that was  
12 specifically triggered, for example, by that -- as we  
13 understand it, was not triggered by that audit firm, for  
14 example, seeking to terminate them. It was a mutually  
15 agreed decision where Binance.US was seeking to transition  
16 to a new auditor.  
17 Q Okay, thank you. When reviewing their audit, their  
18 books, their records, did you review whether Binance has  
19 made loans to any other cryptocurrency companies?  
20 A So one of the key considerations that we looked at, and  
21 again, the audited financials that we reviewed related to  
22 Binance.US. I want to be clear on that. One of the items  
23 that we reviewed was an overview of the assets as outlined  
24 in the audit relating to -- which, you know, is where loans  
25 to third parties would ultimately show up, we were not aware

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1 BY MS. RYAN:  
2 Q So I know that the gentleman with SEC was asking about  
3 reviewing Binance legal matters and things and I understand  
4 that's not your wheelhouse. Who does review them to decide  
5 whether a legal matter is material?  
6 A You know, we have active discussions with the counsel,  
7 with our counsel K&E -- or the Debtors' counsel, excuse me,  
8 which is Kirkland. I know that they're in active dialog  
9 with the UCC's counsel, which is McDermott, for example.  
10 There's active dialog with the company which also has  
11 independent counsel and it would also include, I think,  
12 discussions with Binance's U.S. counsel, so I mean, there's  
13 a lot of professionals. Our lawyers that have been engaged  
14 by various parties in the situation and I'd say to date  
15 people have worked in a very collaborative manner.  
16 Q Thank you. How did you verify that -- and I'm going to  
17 get this wrong. I am not an expert in crypto by any  
18 stretch, but how did you verify the one-to-one ability of  
19 Binance, to (indiscernible) the coins?  
20 A That's a great question. So we did look at, for  
21 example, wallet -- a list of wallets that was provided to us  
22 from the company and looked at, you know, balances in those  
23 wallets. We then compared them to our understanding of what  
24 had been disclosed in the financial statements. To say that  
25 we did a thorough, you know, for example, like a proof of

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1 of any loans based on that audit review that had been made  
2 to third parties.  
3 That was an important element from our perspective in  
4 understanding, you know, the dynamic around whether or not  
5 they had an ability to, for example, you know, rehypothecate  
6 crypto for, you know, for example.  
7 THE COURT: You just said third parties. What  
8 about affiliates?  
9 BY MS. RYAN:  
10 Q Did you see if loans made to -- I'm sorry.  
11 THE WITNESS: To affiliates? That would include  
12 affiliates as well, Your Honor.  
13 THE COURT: I'm sorry, Ms. Ryan. I kind of spoke  
14 over you because I wanted to ask a question before I forgot  
15 as time went on. He had said third parties and I asked if  
16 that included affiliates. And he said, yes.  
17 THE WITNESS: I would say more broadly, Your  
18 Honor, it included all loans that would be made to -- it was  
19 a big concern of ours in light of, obviously, what's  
20 happened in ecosystem.  
21 THE COURT: Thanks. Thanks for the clarification.  
22 I'm sorry --  
23 MS. RYAN: That was going to be my next question,  
24 Your Honor, so thank you.  
25 THE COURT: Okay.

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1 reserves on Binance.US' reserve ratio, though, you know,  
2 that is well beyond the scope of what a firm like Moelis  
3 performs.  
4 There are generally third party auditors, for example,  
5 that perform those types of scopes of service. One thing  
6 that we did look at, though, and was an important  
7 consideration is that that dynamic is discussed and  
8 disclosed in their audited financials and treatment of  
9 customer crypto in the audited financials, the structure is  
10 such that it was determined to be a custody relationship,  
11 that there was no, you know, rehypothecation, for example,  
12 and those elements.  
13 And then on top of that, excuse me, we did receive  
14 obviously sworn statements from Binance, and this wasn't an  
15 area where it is -- it was a key consideration for us, so as  
16 part of diligence, for example, we would ask for information  
17 on a primary, a document basis. We would ask questions in  
18 different ways in order to make sure that we understood and  
19 didn't have inconsistencies with what information was  
20 provided to us. But I would say, you know, look, we did not  
21 do a, for example, like a proof of reserves to the extent  
22 that's the nature of the question.  
23 Q No, that's a perfect answer. Thank you. Did -- in  
24 reviewing the financial documents, were you able to tell  
25 what Binance entity actually keeps custody of U.S.

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customers' electronic wallets?

A My recollection -- I don't recall.

Q Are you aware that in 2019 it was a Binance Cayman Island company that purportedly held the electronic wallets for U.S. customers?

A I'm not aware of that, no.

Q Do you know if Binance.US has the technical infrastructure to run its business without dependence on Binance.com?

A It has been represented to us that they would. Our understanding of the way that they operate is that there are certain commercial services and licensing ingredients, for example, relating to technology that they license from Binance.com, but you know, similar to -- and again, this is my understanding, right?

Similar to, for example, if I were to receive a copy of Windows, I may not need to be able to rely on Microsoft as a firm continuing to operate. So my understanding is that the services that are provided by Binance.com are limited to functions that would allow Binance.US to continue to operate to the extent that Binance.com no longer existed. That was something that we specifically asked about during our diligence.

Q Okay. So for instance, if Binance.com technical infrastructure were to crash, Binance.US would not be

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Q Mr. Tichenor, good afternoon. You stated that a toggle would diminish the value or the return of value on VGX. You also stated that Binance doesn't intend to create value for VGX. Can you explain why there's a difference in the value of VGX in a toggle versus a sale?

A Yeah. So the difference was relating to the fact that Binance.US was agreeing to seek to try to list the token on their platform. Our view, and again in discussion with various people at the company around VGX and other, you know -- who are more familiar with specifics around, for example, specific cryptocurrency assets, the view was that the ability to create value and utility, for example, relating to a sale of the smart contracts in that instance, was likely greater to the extent that the token was listed.

There was a perception of support for it on a go-forward basis, but it was an estimate and you know, what we would say is that ultimately, I don't think that would change the conclusion, which is an important element. We would still view under those facts and circumstances if that element was normalized between those two, that the Binance plan still provides for potentially higher recovery value.

But you know, it was an important element for us to also include relative to this, you know, self-liquidation. But I wouldn't say it was a determining factor, if that's part of the question.

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affected?

A So that is a representation that has been made to us. It was a question that we asked. It was an important element. I can't specifically represent whether or not there's some piece of code that results in a callback function to a server that's -- there's a lot of elements that could cause that to be the case. What has been represented to us is that it's not, and that's as much as I can say.

Q Okay. When you say it's been represented to you, in what manner was it represented? Was it orally, in writing?

A Both. We've had multiple calls. We've had in-person meetings. We've had physical document reviews. Received sworn statements around items like this.

MS. RYAN: Thank (indiscernible) finished. I pass the witness. Have a good afternoon.

THE WITNESS: Thank you. You, too.

THE COURT: Thank you, Ms. Ryan. Is there anybody else on the phone who would like to cross examine the witness?

MR. NEWSOM: Yes, Your Honor. Dan Newsom, pro se creditor. Just a few questions.

THE COURT: Okay.

CROSS EXAMINATION OF BRIAN TICHENOR

BY MR. NEWSOM:

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Q Thank you. Would a toggle transaction not also contemplate the sale of VGX smart contracts?

A It likely would, yes.

Q So in your opinion, in either case, the value or utility of VGX is ultimately dependent on the sale of the smart contract?

A In part. I think the likelihood of finding a, for example, high quality party that is seeking to get, you know, the -- and has an interest in the smart contract utility on a go-forward basis, one of the factors that we understand based on discussions with, you know, the parties that we've engaged with is the forums that that smart contract is listed on, a lot of the value from their perspective in a number of ways, if somebody was to take over that smart contract and seek to turn it into more of utility on a go-forward basis, is in part reliant on the fact that VGX is a known commodity for all intents and purposes.

It's out there. It's listed on a number of exchanges. It trades. People know it from the case. And so that has value for people. And so part of the view I think was that to the extent that a party like Binance.US listed it, one, it shows support from this plan and two, the likelihood of attracting that type of party is arguably better in that circumstance. But again, I do want to be clear that the

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calculation around VGX was not the determining factor in the comparison.

Q Sure. Understood. So when will we know whether Binance.US intends to list VGX or not?

A I can't speak to what their internal review process looks like, unfortunately.

MR. NEWSOM: Okay. No further questions, Your Honor.

THE COURT: Thank you. Is there anybody else on the phone who wishes to cross examine the witness?

MR. HENDERSHOTT: Yes, Your Honor. Tracy Hendershott, pro se creditor. Ladies first. Is that Gina? Gina? Okay, I guess I'll go, with Your Honor's permission.

MS. DIRESTA: I was trying to unmute. You want to go, Tracy? I don't mind.

MR. HENDERSHOTT: Yeah, sure.

THE COURT: Let me ask you --

MR. HENDERSHOTT: With Your Honor's permission.

THE COURT: Let me ask. We're pretty much at our lunchtime. Do you have -- how many questions do you have?

MR. HENDERSHOTT: I'm sorry, Your Honor, you were breaking up. You said something about lunchtime?

THE COURT: We're pretty much at our lunchtime, but how many questions do you have, do you think?

MR. HENDERSHOTT: I have eight questions

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others, in assessing what those discounts could be. I mentioned the 50 percent number in that I would have to go back, but I don't believe the estimate for purposes of the discount was exactly 50 percent on those coins. I do recall that we received a number of bids, though, that were at 50 percent, if not greater.

Q So -- and I guess that's where my confusion is, and so do I recall correctly that you said 100 million would be the slippage for the process of liquidation in total due to these illiquid coins?

A In total, yes. I think the estimate for those specific coins, if I'm not mistaken, is like 60 million specifically. I'd have to check --

Q Okay --

A -- the numbers, though.

Q Okay, so you're saying the slippage is 50 million, not 100 million?

A Correct. The 100 million also includes foregone proceeds that we would receive from Binance.US to the extent that we didn't close with them, which is, you know, obviously the purchase price and then I think I mentioned the VGX element.

Q Okay, but let's stick with the liquidation. \$60 million of damage due to slippage because of the illiquid nature of 35 coins; is that your statement?

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currently, but depending on the answers, it may extend.

THE COURT: Eight questions. Let's do your eight questions.

MR. HENDERSHOTT: Okay. Thank you, sir.

CROSS EXAMINATION OF BRIAN TICHENOR

BY MR. HENDERSHOTT:

Q Good afternoon, Mr. Tichenor. I'm a pro se creditor in this case. I'd like to go back to -- thank you. I'd like to go back to your opening statements when you highlighted obstacles and called out that this was one of the rationale of why the Binance deal is better than the toggle or even a liquidation. And I just want to confirm, did I hear you correctly that in relation to the liquidation, the illiquid coins would result up to a 50 percent slippage commission structure; is that correct?

A Yeah, it would be up to. The analysis was done on a coin-by-coin basis and it was based on a number of factors. So it was -- and I would call it an educated estimate that was done in connection with management and individuals at the company that, you know, have experience in trading crypto currencies. We solicited as I think I mentioned multiple proposals from various different OTC market makers, for example, and collected all of those facts together in determining and working, you know, collaboratively again, you know, not just Moelis, BRG, the company management,

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A That's my recollection of the numbers, yes.

Q Okay. Thank you, sir. So this is where my confusion is. The day before the Debtors turned off access to our investments or even today, you know, go to Coinbase, go to Binance, I go anywhere, I can make a \$5 million transaction at a 5 percent commission. So I'm struggling to understand how, Moelis, you know, the rainmaker, dealmaker, why are you being faced with 50 percent haircut when I can make a \$5 to \$10 million transaction with a 5 percent commission rate?

A So I think even to the extent that we're talking about a \$5 million trade, I think, you know, what happened last night is a good example of what market depth means within crypto, in the cryptocurrency space. We saw a very precipitous drop in the price of Bitcoin and all other -- all coins as a result of what I understood based on what I've seen publicly, to be relatively small trading volume in Bitcoin.

It's -- you know, just even training a \$5 million block of Bitcoin is very, very different than the estate trying to liquidate a large portion if not a majority portion in some instances of very illiquid tokens. And liquidity has a lot of different elements to it. It can be trading volume that's being reported, but ultimately, you know, as we think about market depth, it really relates more to, you know, what the marginal buyers are at various prices.

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And so to the extent you have in some instances, highly, highly concentrated ownership in some of these tokens, the ability to be able to trade out of those and find marginal buyers in certain instances can be very difficult.

THE COURT: The 50 percent or up to 50 percent you're talking about is not a commission. It's what you think --

THE WITNESS: Correct --

THE COURT: -- the effect would be on what people are willing to pay?

THE WITNESS: That's exactly right, Your Honor. We -- there were no -- there would not be a condition, for example, on the block trade. It's already embedded. They're taking the risk in that instance. When the estate does transactions, it uses a range of exchanges, for example, OTC desk, if it were to just sell into the market on its own over a long period of time and the transaction fees on that -- and that's similar to we're doing on the rebalancing. We've negotiated very, very low fees, on a fee basis. To the extent you're talking about a commission, so in comparison to like a 5 percent commission, you know, for illiquid tokens it's, you know, sub 25 basis points.

BY MR. HENDERSHOTT:

Q Could you give us an example, because yesterday and the

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A Sorry. The 35 tokens that we were talking about, you know, as Mr. Renzi put in his declaration, they represent around 17 percent of the total assets on the platform today. They do represent a number of tokens that happen to be more illiquid. The large, well-known tokens like Bitcoin and Ethereum or USDC, for example, are all supported. The 35, based on the distribution, happen to fit in a bit of an odd, sweet spot between being sizeable from a dollar value perspective, but also being illiquid.

Q Okay. If there is a decision made to go to the toggle and any of the estate assets are being sold at a 50 percent discount, would any of the creditors have the first opportunity to buy such discounted assets at that discount price?

A Theoretically, they would have an ability to buy anything that they want in the market. You know, the estate --

Q No, no. The market's not offering the 50 percent.

A Well, there's a big difference, though, between buying a small trade at a 50 percent discount and buying a very large block trade for tens of millions or hundreds of millions of dollars at those levels, so if there are creditors that would like to have discussion around multi-hundred million dollar block trades, I think we'd be happy to have those conversations.

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same conversation came up with (indiscernible) BRG, the example that was presented yesterday which I've heard you contradict today was Shiba Inu as one of the illiquid coins, but earlier today in your testimony, you highlighted the Shiba Inu is not illiquid.

A So --

Q Is that correct?

A I don't believe that's what I said. I said that Shiba Inu was a supported token, I believe.

Q Okay. So could you give us an example of a token where we would expect this 50 percent haircut due to, you know, this liquidation process?

A So from what I understand, and again, this is not just (indiscernible). This is based on, you know, discussions with a lot of parties analyzing a range of these factors. A couple examples would be BTT, VET, and StormX, all of which would fit in that category.

Q Thank you. And can you tell me what the value of BTT, VET, and StormX is on Voyager currently as part of your estate, the total assets for those particular coins?

A I don't have the specific numbers in front of me. I know they're in the tens of millions each.

Q Each or total?

A No, each. And to be clear, the 35

Q Okay. (indiscernible) exercise --

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Q But we're not talking about hundreds of millions, right? You said only 17 percent of the total value across all 35 coins, (indiscernible) 75 -- 17 percent.

A Seventeen percent across all of the crypto currency of the estate. It's across 1.2 to 1.3 billion.

Q So it's about 130 million, divided by 35 coins? Thank you, sir. You also brought up as an example the illiquidity caused the volatility that we experienced in the overall market last night. Would you associate that with some event of illiquidity or more of the revelation of the Congress issuing the letter that they did last night to Binance raising, you know, significant red flag?

A I can't --

Q It would be more credible for --

A I can't speak to exactly what drove the decline in the market last night. The point that I was trying to highlight is that within these markets and a big reason why you see these big discounts in certain coins is that cryptocurrency markets have historically been more volatile than what we see in a lot of traditional markets, and these are markets where you have a -- the largest token being Bitcoin with a multi-hundred billion dollar market cap that trades tens of billions of dollars a day that declined very material amount of value in the course of minutes, and so, you know, as market makers, for example, are looking at doing block

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trades and quoting risk, for example, that's risk that they then assume and they price for that.

And so you know, what they're pricing for in large part -- and again, you know, what you see in a lot of instances is there's higher beta, for example, between these illiquid tokens relative to something like a Bitcoin. And so what they're trying to work through is a dynamic of not being in a position where, you know, they may acquire a block trade and it could be down 20 percent after they've acquired it, as a result of the trade.

And so that's part of what, you know, we've seen when pricing these and to be clear, this is why we reached out to multiple parties with very significant financial capacity to be able to execute on these types of transactions. We did not reach out to just regular parties. We reached out what we understood based on discussions with people in the space, to be, you know, some of the largest participants in this ecosystem for doing these types of transactions. And we received multiple ones --

Q So, thank you, sir --

A -- which also, you know, they weren't aware of what was going on. They weren't talking to each other (indiscernible) companies.

Q Thank you. You keep referring to the danger in slippage of block trades going back to the (indiscernible)

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Debtor has been executing these trades upon, you know, getting the ability to do such from the judge, over a long period of time to try and minimize any of that negative impact it may have on prices.

Q Yes, that sounds absolutely prudent to me. And so I guess when you are taking such a thorough process of breaking it out to where it does not move the market on any given day or any given exchange, I still struggle to understand how you come up with a 50 percent loss on that transaction.

A So to be clear, you know as I was saying, we do obfuscate trades and there are tokens that from what we understand and what's been communicated to us, you know, the levels that they're trading at today and what would be required may already be pushing down prices potentially in some of those, and so, you know, there would be a concern.

There's a big difference between doing, for example, you know, a million-dollar or \$2 million trade on any one of those tokens versus trying to be in a position where, you know -- and so in that instance, let's say you moved from, you know owning -- and these are all purely hypotheticals, right? If, to the extent that the state owned 40 percent of an individual token and it needed to own 30 percent post rebalancing, that means it needs to sell 10 percent interest over potentially a multi-week period.

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just because we went through these numbers yesterday, I believe the number was 91 million of SS for that particular coin currently (indiscernible) Voyager. And you are tasked with either liquidating, rebalancing or liquidation, you know, action for this case.

Would you market the whole \$91 million as one block or would you break it out, you know, 10, 20 different transactions over a defined period of time?

A So I don't want to speak to specifics of exactly how the estate is currently executing the transactions related to the rebalancing, in part because what we don't want to do is telegraph at this hearing anything that may adversely impact creditor returns from parties who may be listening in and trying to front run any of those transactions.

What I can tell you is that the Debtors and their advisors -- and again, this is multiple advisors, not just Moelis -- as well as the UCC's advisors in this instance, M3, have been in complete coordination around the nature of the transactions, the forum that we're doing them in, the way that they are being executed, and it is being done in a manner that allows for, you know, an attempt to obfuscate as much as possible the nature of the trades that the Debtor is doing in order to try and maximize value.

And it is doing it over, you know, what we're trying to do is over a long enough period of time and this is why the

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To the extent that needs to go from 40 to 0, that's a very different transaction. And in some instances, that's, you know, what the estate is dealing with. Again, you know, these are hypotheticals but it's the basis for the analysis that was being done.

Q Okay, thanks for that. And -- sorry. I like to move on to the other obstacle which is a new term for me. In instead of KYC, it was KYT for the transaction. You said that that prohibited, you know, the toggle or at least was an obstacle to the toggle and would require liquidation of all of these illiquid coins on Voyager. And (audio drops) option or what was the other option there?

A So there were two primary issues. One is, the platform itself, the code base, doesn't work to be able to distribute those token in kind. And so, you know, to the extent that you're familiar with different protocols and coins, right, every coin is a little bit different and not all of them are ERC-20s, right, and so in this instance, we have 35 tokens. The code itself, the code base, does not have an ability to distribute those tokens through the Bedrock code, which is my understanding of how they -- they're able to distribute those tokens back to the customers. It doesn't support them.

And so it would require a rewrite of the code base, with subsequent upgrades to be able to bring on additional

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protocols to allow those tokens to be withdrawn. So that's one leg of the issue. The second leg of the issue is the KYT issue, which relates to the ability to actually validate the party and the wallet address that you're sending funds to and that has two elements to it.

One relates to, for example, the inability to distribute those 35 tokens. The other also in part relates to potentially unsupported jurisdictions and the ability to, for example, return coins if the company didn't have a platform to be able to return coins through.

Q So two elements. You said the technical foundation, Bedrock and then the other one is, you know, the other controls of understanding where the transaction is occurring. And let's start with the first one, Bedrock.

Has anyone reached out to actually the originators, the developers, the designers of Bedrock, which would be the Ethos organization to be able to overcome this obstacle?

A The company has developers. It has acquired the Bedrock code. It has maintained it. The people that we talked were the management team of the company that operates the code base today. This was made -- this was based on representations that were made us, you know, by them and, you know, our understanding is it would take some time to potentially allow for that, to do those upgrades. And on a prudent basis --

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have because there was a follow-on impact. So this would be something where to the extent that the company were to do an upgrade on the code base like that, to allow for support of additional tokens, it's not something that I think people would take lightly in this specific instance.

Q Yes, security concerns, but still I haven't heard an answer to my question if anyone reached out to the developers (audio drops).

MR. SLADE: I object. Lack of foundation.

THE COURT: Overruled. Go ahead.

BY MR. HENDERSHOTT:

A I'm not aware of the company having reached out to the original developers of the code base that the company currently maintains.

Q Okay. Thank you. And then the second part of your obstacle (indiscernible) was having to know the recipient of the wallet. So I can go, the day before they blocked my access, I can go in and transfer any of the supported coins to my wallet. It's a single address. It doesn't vary as a wallet address based on the coin.

So I'm not clear on how the Debtors in Possession can actually buy the asset, put -- transfer it to their wallet, and then find a third party when I enter a sell order, transfer that asset to a other third wallet, or that they've already validated the KYT for me whenever I want to do any

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Q Yeah --

A -- to the extent that you're upgrading code base that relates to a distribution, potentially, of a billion dollars, I don't think that anybody would take a code upgrade lightly to the extent that it could have, for example, negative impacts. I mean, with debugging and you never know what the follow-on impact could be, right?

Q So I'm not clear. Is the (audio drops) not originate the code or is the challenge that the engineers who made Bedrock refuse to collaborate with (audio drops) in possession?

A That feels very leading. I don't think I said anything about the developer is not willing to work on it. I was making a statement around what we understood the timeline to be for implementing that and what I was trying -- and I apologize if I wasn't clear on this. What I was getting at was more that implementing a code upgrade in the context of the situation that we're in and the negative impacts that getting that wrong could have, mean that the Debtor would want to make sure that it's being very thoughtful.

The last thing that we would want, given the fact that this a, you know, final distribution for all intents and purposes for certain parties, would be in a situation where somebody put in a bug and all of a sudden a creditor received five times the amount of coins that they should

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of the supported wallets. So can you highlight where the obstacle is there?

A Yeah, it's a good question. So that the company has historically operated, and this was the basis for why the -- again, this is my understanding. I can't, you know, purport to have done a code review on this -- is that for those unsupported tokens that can't be withdrawn and have never been able to be withdrawn, the issue is that, and the way that the company historically worked is that it works with OTC market makers, for example, to do all sorts of transactions, right?

And so the -- what would occur if you were to try and buy one of these unsupported tokens historically would be that you would put cash fiat into your account. You would seek to by that token. Voyager would have quoted you a price for where that transaction would occur at. Voyager then through it's smart order router would do a trade with a market maker on the other side.

They would do daily settlements at the end of the day to actually settle dollar funds relative to coin, with the coin in those instances for those unsupported wallets -- for those unsupported tokens being transferred from a white listed OTC market maker wallet to Voyager's wallet that is held on fire blocks in that instance. So because they are transacting with a white labeled OTC market maker with a

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known wallet address, the trades are only occurring between a handful of parties. The token, the coin transfer in those instances is only between a limited subset of wallets and it occurs once a day, effectively. It's not occurring on an ongoing basis.

Q Right.

A So when you're removing coins, what the Bedrock code is doing is -- and again, my understanding is that it's validating every single transaction as it's happening in small amounts and it has to be automated to do that, given the number of customers and the number of coins that it supports. There would be no way to do that manually.

Q Got it.

A Yeah.

Q So it's Bedrock that is the limitation? It's not really about knowing --

A No, I wouldn't --

Q -- confirmation of the wallet because they've already -- excuse me, sir, if they've already validated my wallet address when they transferred the coin in Ethereum.

A That -- so that's not my understanding. My understanding is that -- and I know, I understand this to be the case, right. Not every wallet supports every type of token, right? If I have an Exodus wallet, it doesn't support every type of token. If I -- Binance doesn't

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investment banker. What was the guiding document that you were obligated to follow for, you know, the auction process?

A I'm not sure I follow. Are you talking about the bid order or the auction procedures?

Q Yeah, the bidding (indiscernible). This was a real guiding document that you had to follow that was approved by the Court.

A Yes. There were -- and I apologize for forgetting the exact name of the documents, but there were procedures that were filed with the Court relating to bidding procedures in -- and the auction procedures in connection with the auction.

Q And when we have that guidance document approved by the Court, did that dictate the terms of the action or are bidders allowed to dictate their own terms in the auction?

A Auctions can be very complicated and so while the bid procedures outline what a qualified bid would ultimately be, it doesn't mean that parties that participate in the auction will follow necessarily, all of those rules. The fact that they may not follow all those rules does not necessarily preclude us from potentially selecting the highest alternative to the extent that that's the one that presents itself. It's -- to a degree, there is a judgment call.

Q Right. Well, I mean, how far can you deviate from what the Court approved bidding plan is? Of course, there's some

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support -- or excuse me, Coinbase support every type of token, right? So to say that you could just transfer to any wallet, you know, I don't believe that to be the case, based on my knowledge of how cryptocurrency works.

And my understanding as has been represented to me is that a number of these tokens, for example, the third-party provider that the company uses for that KYT validation on the wallet that the funds are being transferred to does not support all of those tokens, and so that party has to run its own set of procedures. It's a third-party service provider. I can't represent what those look like, but at least what has been told to me is that they do not support all of those tokens.

And so what it would require is potentially then integrating new third parties that do this or other systems. I don't know what that would ultimately look like but, you know, I would imagine, for example, doing an API upgrade to allow for a multi-party API authentication check between a new third party that's being integrated for these purposes, it's not a small task. At a minimum, I imagine it would take months.

Q Yes, we've had nine months and so that -- would have fit into the schedule. So thank you. If I can move on, I know we want to move on to lunch break here. So just some block and tackle type questions about your role as an

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judgment. The Court approved the bidding plan intentionally to protect the process, protect the estate; is that correct?

A I don't recall the exact specifics of the -- of what was allowed under the bid procedures, but I would imagine that it provides for that type of flexibility. I just don't know. I don't know.

Q (indiscernible) the bid process?

A Yes, but this occurred months ago.

Q Okay. And so as part of the bidding plan approved by the Court, was a backup bidder element, you know, standard in that plan or not?

MR. SLADE: Your Honor, I object. This is not relevant. We discussed this yesterday.

THE COURT: I'll allow --

MR. HENDERSHOTT: Yesterday, Your Honor, BRG could --

THE COURT: I'll allow a few questions on it. Go ahead.

BY MR. HENDERSHOTT:

A So the --

MR. HENDERSHOTT: Thank you, sir.

BY MR. HENDERSHOTT:

A -- bid procedures did my recollection is that the bid procedures did require qualified bids to act as a backup bidder to the extent that they were to be viewed as a

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qualified bid. That's my recollection.

Q And so can you share with us who overrode that critical, pretty standard -- well, first of all, isn't that a standard element of an auction bidding process?

A It's something that is often asked for. It's not always actually abided by.

Q We just -- as Mr. Slade just said, we did discuss this yesterday but we couldn't get confirmation. We were told that Binance refused to comply with the bidding plan. We couldn't get confirmation on the other four bidders. Do you have a better recollection of the FTX auction and the four other bidders, what their refusal or acceptance as a backup bidder was?

A At the end of the auction, there was no party that was willing to be a backup bidder that conformed with the requirements of an order entry. So there was no ability to --

Q So --

A -- appoint a backup bidder at the end of the auction.

Q Being professionals in a corporate auction (indiscernible) activity which I've sat across your team many times, is there an attempt for a backup bidder to introduce competitive tension to ensure that the best bid and the most efficient bidding process is concluded with the first round of bidding and the competitive tension forcing

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provision to the extent that they were a backup bidder, that would have required an expense reimbursement that did not conform with the bid procedures. And so they were not selected as a backup bidder at that time because it was not a bid that conformed with a ability to actually enter to the extent that we were to select them. In hindsight, we wish that we had them as a backup bidder and had paid for it, of course, and in light of what happened with FTX, of course, we wish that we weren't in this situation.

THE COURT: So in other words, they said to you, were not willing to make a qualified bid. We'll make a bid on different terms.

THE WITNESS: And we want to be paid. Basically, they said that they want to be paid to be a backup bidder which is not something that is standard in the auction process.

THE COURT: Right. So they gave you the option to seek a variation from the bid terms and try to entice you with a deal, but it wasn't actually something that you had the ability to accept and make them an automatic backup bidder; is that right?

THE WITNESS: That's correct, Your Honor.

THE COURT: Okay. Does that explain things, Mr. Hendershott?

MR. HENDERSHOTT: It does, thank you. Thank you

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each bidder to give the best offer at the first round of bidding?

A It's one of many factors. The reason we ran an eleven-day auction which is unprecedented as far as auctions occur was to maximize that competitive tension and I can at least represent from the beginning of where the auction started to the value that was ascribed to the winning bid, it was increased in many multiples on a dollar value basis. We ran a, you know, in our judgment, a very competitive, long, hard auction option to try and drive as much value as possible.

Q Well, I'm confused, though, because if compliance with the written plan was actually followed, the original bid of Binance was 50 million would have returned more creditor value than the follow-on bidding cycle of 20 million. Do you see that differently, sir?

MR. SLADE: Your Honor, I object. This is not relevant.

THE COURT: Go ahead and explain.

MR. HENDERSHOTT: It is relevant, sir and --

THE COURT: No, no, no, no -- I've overruled the objection. I'm ask -- I'm telling the witness to go ahead and explain just what happened. Why did we not have a backup bid from Binance at that time? Did they --

THE WITNESS: We did not have a backup bid from Binance at that time because their final bid included a

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both for that.

BY MR. HENDERSHOTT:

Q So what I'm hearing then is there's no qualified bidders, backup bidders, at the FTX round.

A Well --

Q Is that correct?

A I think there's a difference -- I mean, obviously, the bid that we accepted we viewed as being a qualified bid because we ultimately entered it, but it was viewed as the highest and best at that point in time, based on facts and circumstances at that point in time.

Q But not in compliance with the bid plan.

A Excuse me, I couldn't hear that.

Q Is that correct?

A I'm sorry, I --

Q Bids were not in compliance -- yeah, not in compliance with the bid plan which calls for backup bids.

A Well, if that were the case, we wouldn't have an auction at all.

Q Right, because there was no qualified bidders according to the bid plan. Then would that logically then lead the discussion to go into the toggle option at that point when there is no qualified bidders?

A Well -- and again, I want to be clear. When, you know, the focus is very much on the backup bid right now. We went

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into an auction. We had received bids. They had qualifications relating to parties acting as backup bidders or not. I can represent that this was a very much discussed topic at the auction. Again, we ran an eleven-day auction. It was not something that was missed by parties. The view was, you know, while people were expressly unwilling to do this despite every attempt from the Debtor to try and actually get also a party to act as a backup bidder and we tried a number of different strategies in order to try and have that happen.

We ultimately drove the price up. We, you know, had the situation that we did, which was we appointed FTX based on the facts and circumstances at the time, the nature of their bid, and decided to move forward with that and did not have any other parties that were backup bids because they would have required, for example, the expensive reimbursement.

So we were unable to select one. But with that said, said because of the dynamics at the auction and the competitive tension, again, we drove up the purchase price at that auction multiple, multiple times over where the auction value started at.

Q Okay. I mean, (indiscernible). I appreciate that clarification, the insight. Again, block and tackle, how is the contract between the Debtor in Possession and yourselves

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A I believe our fee declines by a million dollars. It's a \$12 million to an \$11 million fee.

Q Okay, so 12 million if a purchaser is achieved, \$11 million if we go to a toggle.

A That would be my understanding, yes.

Q Okay. So -- and thank you for that. So is there an estimate -- there's only \$1 million difference there, so -- and I'm not saying what the outcome is going to be, but with the monthly retainer fees and the transaction fees cumulatively, do you just have a round estimate of what the total value of your contract is going to be with the Debtors in Possession?

A I apologize. I don't off the top of my head.

Q Well, you know, we can start with 12 and 11 then, as a base. Is there -- can you share what the monthly retainer is?

A I don't recall what the monthly retainer fee is. I don't. I know --

Q Is there other transaction --

A Excuse me?

Q Is there other transaction fees besides the 11 or 12 million?

A Not transaction success based fees. My recollection of our engagement letter, which is tradition and, look, was negotiated on arm's length basis as well with the UCC and,

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structured, you know, from a -- is the payment and compensation a time and materials or is it a event-based payment structure?

A I believe our engagement letter is publicly filed, so it depends. We have a --

Q I --

A From Moelis' perspective, we have a monthly retainer fee that we are paid and then there are different types of transaction-based fees.

Q Okay. So I guess I'll be more specific. I've heard, and I don't recall reading your specific contract that the transaction is a combination of an acquisition (indiscernible) \$12 million payout; is that correct?

A In a sale transaction? I --

Q Yes, for a transaction payout --

A I believe that's correct.

Q Okay, thank you. Is that transaction payout still in effect if the Binance deal does not go through and we move to a toggle?

A There is a, I believe, a different feature, to the extent that that would occur, be a restructuring transaction.

Q And forgive me for having you repeat. You said it was public information, could you just share with me what that alternative transaction structure is?

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you know, other parties, is traditional and market based for situations like this. And typically, you know, in this instance, the, for example, oftentimes fees are negotiated relating to things like DIP facilities or an ability to raise equity capital. Obviously, in this instance, none of those transactions would contemplate that.

Q Safe to say it's 15 million cumulative?

A That feels high based on the number of months and crediting features, but I -- again, I don't have our engagement letter in front of me so I apologize. Like, speaking to the exact numbers, I just can't. I can't speak to that.

Q So the reason why I'm asking is you presented that the Binance deal is the best one for the creditor class because of the guaranteed \$20 million payout and (audio drops) another \$80 million (audio drops) value. But (audio drops) \$20 million if \$60 million of that is going from the wallets, including my calculations that's a 75 percent cost.

You know, on ROI I'm receiving 20 million. I've (indiscernible) frequently. I never recall paying 75 compensation for any deal we engaged in and I'm curious. Can you tell me what, you know, percentage-wise, how frequently your clients ever accepting a 75 percent cost to any deal they negotiate with you?

THE COURT: I will -- I see an objection coming

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and I'll overrule it. You completely misstated his testimony, Mr. Hendershott.

MR. HENDERSHOTT: I'm sorry, I misstated it?

THE COURT: Yes, you did.

MR. HENDERSHOTT: Okay, can -- help me if you would, \$20 million payout from Binance is --

THE COURT: You've misstated it to suggest that the \$20 million goes entirely to his fee as though that fee wouldn't otherwise be there anyway, which is wrong. Okay? You've suggested that --

MR. HENDERSHOTT: No --

THE COURT: -- there's only a \$5 million incremental value which is flatly contrary to what he's testified. His fee is there, whether there's that \$20 million or not. It's a \$1 million difference, is what he testified to. So if you go to the toggle, his fee is \$1 million less. So if you go to the Binance deal, essentially what he's testified to is since his fee would be slightly higher, there'd be a \$99 million advantage instead of \$100 million. That's what he's testified to.

MR. HENDERSHOTT: Okay. Thank you for the clarification, sir. Thank you, Mr. Tichenor. I cede the podium.

THE COURT: Okay, before we have any other questions, we'll take our luncheon break and we'll resume at

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how it's done, that Binance has said that's how it's done. That's what everybody here seems to want to have some verification of. What's so hard about putting that in a declaration and filing it?

MR. SLADE: So Your Honor, Mike Slade for the Debtors. Obviously, that's up to Binance. It would be great if they did that. In our discussions, I mean -- and I think some of the cross examination has borne that out that I think if their witness was -- were to swear to this, were to be subject to cross examination, which would be as broad in scope as some of the cross examination that has occurred during the past couple of days --

THE COURT: Well, you know, I've allowed an awful lot of questions and I think that the kind of questions and torment that the witnesses have gone through would probably scare anybody off on willing to say anything, but I'm not asking for that. I'm just asking for a sworn declaration for what presently is just hearsay, something I can rely on that is by way of verifying what they have already told the Debtors.

MR. SLADE: We understand the request.

MR. GOLDBERG: Your Honor, Adam Goldberg of Latham and Watkins on behalf of Binance.US. So may I just ask Your Honor a question? Because I understand that -- I'm just confused as to whether it's just a statement to the Court

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2:45.

(Recess)

THE COURT: Before we continue with the witness examination, I have a question for the Debtors' attorneys and for Binance's attorneys. We've had an awful lot of questions about due diligence matters and about Binance's practices in certain regards and it sounds like from what the witness is saying, Binance has been willing to give sworn statements to the Debtors on some of these points, but I don't have them. I don't have any declaration. I have no Binance witness. I don't even have copies of what Binance has given to the Debtors.

What would be so hard about filing a declaration on behalf of Binance that simply says that that with respect to customers, Binance maintains assets on a one-to-one ratio with respect to customer deposits and intends to continue to do so; that it keeps customer cryptocurrency in separate wallets segregated from other cryptocurrencies, that it does not lend or rehypothecate customers' cryptocurrencies; that no one outside Binance.US has access to the keys for the customer wallets; and that Binance.US intends or its current practice and its intended future practice is to transfer or use customer cryptocurrency only as directed by the customers themselves?

I mean, I've had repeated testimony that that's

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for the Court's benefit or whether the -- whoever the declarant, would be exposed to cross examination?

THE COURT: I'm not anticipating cross examination, I'm just, for my own comfort, asking for a sworn statement to verify what has already been told to the Debtors.

MR. GOLDBERG: Thank you for that clarification, Your Honor. Please allow me to consult with my client.

THE COURT: Okay.

MR. GOLDBERG: Thank you.

THE COURT: All right. It would give -- it would help me a lot because I'm -- it's odd. It strikes me as extremely odd to have so many questions raised about relatively straightforward business practices and to have nothing but hearsay and no Binance witness or a kind of verification at all, seems odd to me.

MR. SLADE: Completely at their request, Your Honor. We made it prior to hearing and I think the reluctance is for the reason that I stated, that you never know how broad the cross examination would get.

THE COURT: Right. Okay. All right, back to Mr. Tichenor. Is there anybody else on the phone now who wishes to cross examine?

MR. RIZK: I do, Your Honor.

THE COURT: Who is this?

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MR. RIZK: My name is Andrew Rizk. I'm a creditor.

THE COURT: Okay, please proceed.

MR. RIZK: Okay, I just got two -- I just have two really quick questions.

CROSS EXAMINATION OF BRIAN TICHENOR

BY MR. RIZK:

Q One, you know, if you were in kind of our shoes as a creditor and had the knowledge that you have of this potential sale transaction, what would be your personal concerns or fears, if any, of this going through?

A I think, you know, things that we believe and understand the creditors care about are items -- you know, threefold, I would say. One, you know, we understood from the onset of the case that speed and the ability to return funds to people as quickly as possible was paramount. It was a focus that we had. It was very much -- I think we were aligned with the UCC around that. We sought to do everything possible from the very, very beginning of this case to try and do that.

Unfortunately, obviously, there were things that happened with FTX that set that back, but we do understand speed is an important dynamic. I think, you know, our understanding is that the ability to get in-kind recoveries is very important. There are people that have very low tax

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long process and try and restart everything upon the failure of FTX. We engaged immediately in discussions with people that we knew were aware. We had additional inbound. We ran that down as fast as possible and we -- I would say too, I don't believe that the timeline that we're working off of is any different than what would have happened if we had also chosen to potentially pivot to a self-liquidating toggle post that collapse.

There was a lot of work that was even done post that, around what self-liquidations could even look like with all these factors in mind. So, look, to me, those were things that I think, you know, I would be thinking about and I appreciate, too, the counterparty elements are going to be important, which is why we have also tried to engage in diligence on the nature of the counterparty asking questions, asking important questions around safety and soundness. Those are all things that I would imagine creditors care about in this situation.

Q Right. So you mentioned the potential, you know, with this, with the sale, the potential sale, there's potential risks. You know, just from a layman, not really understanding all the lingo in the disclosure statement, what are some of those risks with the sale transaction?

A Look, I think --

Q In your opinion.

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bases, for example, in these assets and we do understand the nature of a lot of the underlying. They bought the crypto with the understanding that that was what they were going to get back.

I personally would think if I -- I'm a customer of E-trade, right, and if I had a share of GE and there was a problem with E-trade, I wouldn't want something different than that back. That's, you know, what I thought was mine at that point in time. And so, you know, we are trying to do that in the contours of the Bankruptcy Code and I think the other thing in it was recovery value. We've -- you know, I personally listen to a lot of Twitter spaces including the UCC's ones.

I listen to a lot of the other ones. You know, we follow social media channels like -- you know, we do understand and hear from creditors that people have faced pain associated with this situation. This has not been easy for people. And we do care about trying to maximize value and that's something that we've been focused on. And that's part of the reason why we're presenting these two options.

We believe one of them potentially provides for a higher recovery value, but we understand that there may be potential risks associated with that relative to a self-liquidation. But what we did not do during this was run a

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A -- that's the basis for a lot of the discussions that we're hearing today. I think that the primary risk would be around comfort levels with moving forward with the counterparty and having sufficient diligence being completed that on a risk-adjusted basis, the value associated moving forward with the sale relative to pursuing the self-liquidating toggle is ultimately worth it.

And that's something that, you know, that decision isn't going to be made today, but will be several weeks from now and is not something that I think we would take lightly. I think there will be a lot of consultation with the UCC, other advisors that are involved in this process, and obviously, ultimately, the board of directors of Voyager Digital LLC.

Q That's understood. Thank you for that response. The last question I have, I wasn't understanding yesterday when I was listening in, so the 73 percent recovery that was mentioned on the call would be the potential recovery if the sale goes through, but Alameda is not successful in clawing back whatever they're trying to claw back. But if they are if they are successful, I heard 24, 26, 48 percent. What is it? What's that going to be if they're successful in clawing back the 400 million or 75 million or combined or whatever it is they're trying to claw?

A Yeah, and I apologize, because I don't remember the

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exact number that was quoted at the hearing yesterday and I apologize for that. My recollection is that it's in the mid-40s. I want -- believe it was 44 percent, I'm not mistaken.

Q So if they're successful with that -- I saw online initially it was 26 percent, but --

A Yeah.

Q -- I think you guys liquidated or gave some money back during your selloffs, recent selloffs. So that 24 percent is now -- so if this sale goes through as a creditor, worst case I'm getting 48 percent of my money, best case I'm getting 73 percent?

A Well, so there are a number of factors, right? And so I think one of the big differences is that in the initial disclosure statement as people were looking at the recoveries and the basis for that mid-twenties number which, you know, we did see and I followed that closely on Twitter, for example, because I know it's been quoted a lot. The basis for that is based on the 1.002 billion of estimated crypto value owned by Voyager based on -- I believe it's a 30-day market average on December 18th.

And so from a market value perspective what has happened is that the price of cryptocurrency fortunately has increased quite a bit over the period. And so when we look at the recoveries today, those are based on current market

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based on the proposed settlement with FTX around these matters would be that of the crypto broadly speaking that the estate has, it would need to sell effectively an additional 445 million in volume to cash holdbacks to potentially deal with FTX-related clawback issues. To the extent the estate succeeds on that basis, those funds then would be subsequently distributed on a cash basis and we could discuss if there was a new accounting ability to do that. But I think the operating plan would be that it would be a cash -- future cash distribution to creditors of that value. So you should think of it as that mid-40s under any scenario is likely what's going to be distributed up front. Again, dependent on market movement. And then there would be a subsequent cash distribution to the extent the estate wins around those ultimate points.

THE COURT: Thank you. All right. Is there anyone else on the phone who would like to ask questions of Mr. Tichenor?

MS. DIRESTA: Yes, Your Honor. My name is Gina DiResta. I am a pro se creditor. I would like to speak.

THE COURT: Yes. Do you have questions or are you...

MS. DIRESTA: Yes, yes. I'm sorry, I'm just pulling up my notes.

BY MS. DIRESTA:

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prices as well. That mid-40 is now adjusted real time as well leading up to ultimately a distribution. We don't really know what that number is ultimately going to be because the prices used for determining those values will be based on future market prices that we don't have yet. So it could move up, it could move down. It depends on what happens with crypto.

Q Okay. But as of yesterday, whatever it was when we were talking, it was worst-case 44, best case 73?

A Those numbers sound correct. But again, I don't have the exact numbers in front of me.

Q Yeah, that's fine. I'm just trying to understand. I saw the formula and I get how it's calculated. And then I think that's pretty much the questions that I had. Thank you for your time. Thank you, Your Honor, for letting me speak.

THE COURT: Just to make sure -- thanks. Just to make sure everybody who is listening understands Mr. Tichenor, we're not saying that the initial distributions, the first distributions would be 73 percent. There have to be reserves while these issues are discussed so that the first distributions would be more in line with what the minimums are that we've been talking about, right?

THE WITNESS: That's absolutely correct, Your Honor. And so the way that it would work under the plan is

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Q So yesterday when the BRG gentleman was the witness, I had asked him some questions and he said something different from this witness today. I am a creditor who does not want to open a Binance account and I just want to get cashed out. And I also don't want my KYC or any other kind of information to go to Binance. But unfortunately, yesterday it was said that I don't have a choice in that, that all of my information is going to go to Binance anyway.

But then I had asked if I'm getting cashed out, does that mean that I am just -- that -- will my assets get transferred to Binance and then Binance cashes it out and then gives it back to Voyager and then Voyager cuts me a check?

And the BRG gentleman said that my assets would stay at Voyager and then Voyager would cash me out and then I would get a check that way. But then today when you were being asked a question, you said the opposite. You said that my assets would get transferred to Binance nonetheless and then they would cash out my assets and I'm assuming then give it back to Voyager and then they cut me a check, which just seems so time-consuming and ridiculous. I just don't understand why I can't just keep my private information, all of my KYC, my banking information, my driver's license picture, all that stuff. I don't see why that has to be transferred to Binance. I don't see why my assets have to

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1 be transferred to Binance if I just want to get cashed out  
2 and I want absolutely nothing to do with Binance.

3 A I appreciate the concern. The terms that we negotiated  
4 in the APA with Binance were ultimately that they deeply  
5 cared about the ability to potentially market to customers  
6 is the primary consideration from their perspective. There  
7 were a number of items within the APA that were hard fought.  
8 There is no situation ever from an M&A negotiation  
9 perspective where you get everything that you want. So  
10 there were tradeoffs that were made. And so under the  
11 proposal and terms of service that Voyager has, it has an  
12 ability to sell customer information. That was critically  
13 important we understood from a value perspective for  
14 Binance. Do I wish we could potentially have something  
15 different? Of course. But this was the deal that we  
16 ultimately negotiated and agreed on with them that provides  
17 for both of those elements. The estate has the ability to  
18 sell the information under the terms of service. It was  
19 something that they were seeking, and that was the deal that  
20 ultimately -- you know, we felt like this was a value-  
21 maximizing potential alternative that would provide for  
22 enhanced recoveries. And those were some of the tradeoffs  
23 that we had to make.

24 Q So then for me, what is the process since, like I said,  
25 everything is going to Binance whether I want it to or not.

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1 you would have been a Binance.US customer prior to any of  
2 the funds being transferred to Binance.US associated with  
3 your account.

4 To the extent you choose not to and you don't want to  
5 migrate, you don't open an account, the crypto associated  
6 with that does not leave Voyager for that three-month  
7 period. Voyager will continue to hold that crypto on fire  
8 blocks in its other third-party services or exchanges to the  
9 extent that's the case. It will not migrate to Binance.  
10 And at the end of the three-month period for those parties  
11 that are in supported jurisdictions under the existing APA  
12 or proposed plan, the way that that would work is that user  
13 base's crypto would then transfer to Binance and would be --  
14 Binance would ultimately sell that crypto on behalf of the  
15 Debtor effectively and then transfer back the cash proceeds  
16 associated with it.

17 And then Voyager would ultimately cut checks. I can't  
18 speak to the party that would be acting in that regard. I  
19 just don't know.

20 Q Okay. Got it. So my next question. So on March 1st  
21 the U.S. Senate Office, they issued a letter addressed to  
22 both Binance and Binance.US. And I'm just going to read one  
23 sentence from that letter. And it says, "Binance now faces  
24 investigations into criminal sanctions evasion, money  
25 laundering conspiracy, unlicensed money transmission,

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1 Do I just sit around for three months and then after the  
2 three-month period Binance cashes me out? And then who  
3 sends me the check? Or do I have to do anything to express  
4 that I want to be cashed out?

5 A On your last point first, maybe I'll address that. I  
6 don't know the answer to whether or not you have to do  
7 anything to be cashed out or not. I would have to review  
8 how that's contemplated under the plan. I imagine that  
9 there's a mechanism that wouldn't require you to necessarily  
10 do anything. But I do want to be honest, I don't know the  
11 answer to that. So I would recommend reviewing the plan. I  
12 think there's a customer migration protocol that's been  
13 published. So I would look at the Stretto website for  
14 additional information on that.

15 With regards to the mechanics of how the crypto  
16 transfers would work in the instance that a customer chooses  
17 not to migrate. So -- and maybe I'll start with how the  
18 migration works for customers that do sign up.

19 So if a customer does sign up, they would go through  
20 KYC procedures on Binance.US Upon that customer being  
21 validated as a Voyager customer, Voyager at closing or at a  
22 period thereafter, at least one week, Binance.US would  
23 transfer that user's crypto associated with that account to  
24 Binance, who would then distribute that to the customer's  
25 account directly. So at that point, you know, inherently

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1 questions about its financial health and increased scrutiny  
2 over its intentionally-opaque corporate structure. So  
3 within that letter -- so that's -- you know, that's pretty  
4 heavy allegations. And in that letter, they asked for a  
5 bunch of production of documents with a deadline of March  
6 16th, which is just about two weeks away. So let's say  
7 March 16th comes and Binance does not provide those  
8 documents. How does that affect the Voyager deal?

9 A So the letter was news to use yesterday, too. So after  
10 I left the courtroom yesterday, we found out about it last  
11 night. Obviously in light of that, there were a number of  
12 discussions in the evening as well as this morning.

13 To be clear, we are still digesting that as well. It's  
14 new information from our perspective. Look, I think it  
15 relates to statements that we had made this morning around -  
16 - you know at this point in time, are we ready to move  
17 forward with Binance? No. There is still incremental due  
18 diligence that would need to be done in order for us  
19 ultimately to feel comfortable moving forward on that basis.

20 The plan now, which has the support of 97 percent of  
21 the creditors, provides for this backup option, which we  
22 think is greatly important. And so ultimately that  
23 determination around whether or not we'll move forward with  
24 them is likely to be several weeks down the road. I in my  
25 personal view don't see a scenario where we likely would be

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able to close ahead of the 16th. And so would that potentially be a factor and it goes into our decision? Of course it would. But there is additional work that we need to do. We plan on having conversations with them. We had a conversation with them this morning about it. But there is more work to do there. And at this point in time, I'm not in a position to say exactly how that is going to play out at a future point. But I can tell you we're going to do work. I know the other parties that are advisors in this case are going to continue to do work as well. We'll work in consultation with the UCC and ultimately it will be a recommendation and a determination by the Board at that point in time, which is likely to be after the 16th.

Q Okay. And then assuming that -- I heard said earlier that if an order isn't entered into by Monday, which is March 6th, that Binance can pull out of the deal and it triggers the reimbursements. I don't understand what that is. Can you explain that to me?

A I'm not as familiar with the specifics of that. I would have to ask counsel on the exact timing.

THE COURT: Can one of the Debtor's counsel just explain that provision to deal with that question?

MS. OKIKE: Yes. So there is what's known as a milestone in the APA and it requires us to have the order confirming the plan entered and approved by the Court by

saying, that that's one of the benefits of the Binance deal, that with the toggle option, there are 25 unsupported tokens. And if Voyager went through the time and effort to make them supported, it would take six to nine months and, you know, cost millions of dollars. And if it was liquidated instead of becoming supported, if it was liquidated, then it's like we're moving about \$60 million, about \$100 million loss that you were talking about earlier with the toggle option.

But instead of cashing it out, if Binance is offering to help with the toggle option and they have the ability to deal with the unsupported coins, couldn't they then just help out with that portion?

A So that's not something that we have specifically discussed with them. So I would have to ask around their willingness or desire to do something like that. Additionally, candidly, I think we'd have to do some additional work on our side to understand what the financial implications and operational logistics of that kind of construct would ultimately look like. The plan construct that we put forward was relating to either we feel comfortable with Binance as a counterparty and we would potentially pursue a deal with them in the context of that being a value-maximizing solution or we don't. To the extent that we don't, to me it would on the surface feel

March 6th. To clarify one of my prior statements, taking a look at it over the break, it's unclear whether that actually -- the failure of the entry of an order by that date would trigger the expense reimbursement. There is a requirement under the APA to have that order entered by Monday.

MS. DIRESTA: And can you explain to me what it means by expense reimbursements?

MS. OKIKE: Yes. So there is a provision in the APA which was approved when we got authority to enter into the APA which provides for reimbursement of Binance's expenses up to \$5 million in certain circumstances where the APA is terminated.

MS. DIRESTA: Okay. Thank you.

BY MS. DIRESTA:

Q So now back to Mr. Tichenor. Earlier I think I heard you correctly, so correct me if I'm wrong. But it seemed like you said when the topic was about the toggle plan, it seemed like you said Binance offered their services to help with the Toggle plan. Is that correct?

A They have agreed to offer services to assist in the toggle plan. That's correct.

Q Okay. So if that's the case, then instead of -- if we do the Binance deal, then all of the coins and tokens are -- can be transferred, right? That's what everyone keeps

potentially a little unfair to those customers to say, well, for those 35 unsupported coins, we're uncomfortable moving forward with that counterparty to do the X, Y, and Z factors for everybody else. But for you, you have to. You know, that to me also feels like an unfair tradeoff or unfair treatment potentially of those customers relative to everybody. To me, it's more of probably a binary decision. Either there's enhanced recoveries or there are not enhanced recoveries.

Q Okay. I understand your point. But is it something that you guys would look into? And not even just Binance. Because, you know, there might be other exchanges out there who would support those 35 unsupported coins. Would you at least look into that option as well?

A I can take this back and have a discussion internally around that. I would have to --

Q Okay. Okay, great. Thank you. Okay. Give me a second as I go through my notes here.

During your due diligence with Binance, did you guys -- did Binance provide documentation showing both assets and liabilities?

A So we reviewed the -- excuse me?

Q I didn't say anything.

A Okay. Apologies. I thought I heard something. So during our due diligence with Binance, we reviewed the

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1 audited and unaudited financial statements which would  
 2 include both their assets and their liabilities from a BAM  
 3 Trading Services perspective. One thing to note is because  
 4 of the way that they treat their customer crypto, for  
 5 example, for audited financial statements, the way that it  
 6 works is that to the extent that you view something as a  
 7 custody relationship let's say, to the extent that you don't  
 8 view yourself as having ownership rights over underlying  
 9 crypto as an example, right? The audit standards would say  
 10 that that is not property of that business and so therefore  
 11 those assets don't get consolidated in. That said, they are  
 12 disclosed via footnotes. And so to the extent the question  
 13 relates really to one element from a reserve perspective on  
 14 crypto, that's not something that would be disclosed as a  
 15 separate set of information, audited financial statements.  
 16 And I'm not aware of the standards requiring that. But we  
 17 did review the assets and liabilities of the business as  
 18 (indiscernible).

19 Q Okay. My next question is earlier in this hearing, the  
 20 SEC was asking a bunch of questions. And the first line of  
 21 questions was about the due diligence that you guys did with  
 22 the crypto security protocols and all the different meetings  
 23 that you guys had, the wallets and the transfers and all  
 24 that stuff. And when he was asking who all was part of the  
 25 meeting, you said that people at Moelis and some of the

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1 businesses and plans to operate and be able to compare that  
 2 and say, look, is this standard? Do they feel like they  
 3 have more (indiscernible) or less (indiscernible), right?  
 4 There's dynamics there too that we wanted to make sure we  
 5 were also independently checking and verifying beyond  
 6 discussion with management and the consortium of  
 7 professionals involved in this situation.

8 Q Okay. Because during the SEC's lines of questioning,  
 9 it seemed like they were trying to determine if you guys  
 10 basically had had any crypto experts that was able to verify  
 11 all of the information that Binance was giving you.

12 Because, you know, he was asking questions like, you know,  
 13 what is this certificate versus that certificate and how do  
 14 you know that, you know, it's good and that kind of stuff.  
 15 And he was kind of asking kind of the same stuff I'm  
 16 wondering too. If you guys had crypto experts, and you said  
 17 you guys didn't hire any crypto experts. So I'm just  
 18 wondering, like, who really reviewed all of the  
 19 cryptosecurity protocols if you guys didn't hire any  
 20 experts. And let's say the chief technology officer of  
 21 Voyager was not a part of the meetings and stuff like that.

22 A So it's a good question. What I would say is we -- and  
 23 to be clear too, we did this work as an investment bank and  
 24 this is generally well outside the scope of things that are  
 25 covered from a diligence perspective that we do. But, you

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1 attorneys and other advisors were there. And when he asked  
 2 who from Voyager attended, the only name you provided was  
 3 the CEO's name, Steve Ehrlich. Can you remember any other  
 4 employees from Voyager attending those cryptosecurity  
 5 protocol meetings?

6 A Well, I want to be clear. I want to make sure from  
 7 Steve's perspective with regards to attending the meetings.  
 8 I would have to go back -- I don't know if he attended the  
 9 meetings directly. It's not uncommon, right? And from a  
 10 confidentiality perspective it would not be uncommon for  
 11 something where a counterparty relating to something with  
 12 this level of potential concern would want to limit it to a  
 13 professionalized-only basis. And so oftentimes what that  
 14 means is that it's limited just to parties that operate in -  
 15 - and if you're familiar with -- like this is part of our  
 16 core business, is maintaining confidentiality.

17 And so what I want to be clear on is we had discussions  
 18 with the management team around information that we learned  
 19 around those discussions. We've had discussions with a  
 20 number of parties. You know, as I said, the company -- we  
 21 discussed at the board level, we discussed it with other  
 22 professionals. We compared it to how we understand other  
 23 organizations to work. So it's not like this is just  
 24 something we're -- you know, we left it at that level. We  
 25 went out and compared that to how we understand other crypto

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1 know, we sought to try to confirm these elements because it  
 2 was important to us from a counterparty due diligence  
 3 perspective to be able to say that we were doing the work.  
 4 We've continued to have conversations with them around these  
 5 elements. There are generally a lot of concerns that people  
 6 have around sharing of this type of information too from a  
 7 security perspective. And I say this because even to the  
 8 extent that we did hire let's say a third party firm, it's  
 9 not clear to me that they -- that the counterparty would  
 10 have necessarily allowed for a third party to have done an  
 11 independent code review and on-site forensic diligence  
 12 session and, you know, potentially a multi-month process in  
 13 order to be able to verify all of those elements. That's  
 14 highly, highly atypical in these types of situations from a  
 15 transaction perspective. But in addition to that, it does -  
 16 - and we do understand this to be the case -- does create  
 17 potential security concerns for them. They do operate a  
 18 business on a day-to-day basis, and the more people that you  
 19 let under the tent around what those security protocols look  
 20 like, the more risk that that potentially presents to them  
 21 as an organization. So what we did do and sought to do is  
 22 also seek sworn assurances around these elements from  
 23 executives at the company where we at least would be able to  
 24 rely on that as an enhanced level relative to even just  
 25 statements that they're making on calls or Zoom, or even

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1 based on documents that they may have received. It's just a  
2 heightened standard. And so that was something that was  
3 also very, very important from our perspective to be able to  
4 get.

5 THE COURT: Just to interrupt you for a second.  
6 The ISO and SOC 2 documents that you had described, those  
7 are not Binance people telling you things. Those are  
8 outside people reviewing what Binance does and telling you  
9 that it complies with certain standards, right?

10 THE WITNESS: That is correct, yes. For the SOC 2  
11 and the ISO statements, that's correct.

12 THE COURT: And Binance paid those people to do  
13 those reviews, but those reviews were provided to you.

14 THE WITNESS: And they were provided to us by  
15 Binance. So...

16 THE COURT: Yeah.

17 THE WITNESS: Yeah.

18 THE COURT: But the reviews themselves are by  
19 other people certifying that they've looked at it and it  
20 complies with whatever the standards are that  
21 (indiscernible) described.

22 THE WITNESS: With standards and -- like, I think  
23 beyond those, I haven't received the report, but we've been  
24 told that they also comply with PCI, DSS standards, which  
25 relate to requirements under credit card transfers and

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1 equates to one percent of recovery for the creditors. So  
2 with the toggle option, you said we would leave about \$100  
3 million. So that equals about five percent recovery lost.  
4 Is that correct considering what the BRG value confirmed  
5 with the math?

6 A That's correct.

7 Q So yesterday the percentage that was given was as of  
8 February 27th, the recovery would be 73 percent if the  
9 Alameda loan -- I'm sorry, Alameda clawback does not go  
10 through. If the Alameda clawback does go through, then that  
11 73 percent gets reduced to 38 percent. So assuming the  
12 clawback does not go through with the 73 percent, we would  
13 lose five percent with the toggle option, making it about 68  
14 percent as of the date of yesterday if we did the toggle  
15 option approximately, right?

16 A So based on those numbers, my recollection is it's a  
17 five to six percent differential between the two. So  
18 between the plan option with Binance relative to a self-  
19 liquidation of recoveries.

20 Q Okay. Give me one second.

21 A And to your point yesterday, it's beginning to think of  
22 the recoveries associated with Alameda as either succeeding  
23 or not succeeding. So it's a parallel shift depending on  
24 ultimately what happens.

25 Q Okay. So jumping to my last question. I don't really

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1 what's needed. So I mentioned those two because those are  
2 the two reports that we received. But I am --

3 THE COURT: Okay.

4 THE WITNESS: I've at least been told that there  
5 are additional standards above and beyond that.

6 THE COURT: Very Good. Sorry to interrupt your  
7 questions. I just -- sometimes I have to interrupt or I'll  
8 never remember all my own questions at the end. Please  
9 proceed.

10 BY MS. DIRESTA:

11 Q Did you have anything else to add, Mr. Tichenor?

12 A I don't believe so on those points. Hopefully I  
13 answered your questions.

14 Q Okay. Okay. And then earlier someone was asking how  
15 much you guys were going to get. So I believe you confirmed  
16 that if you guys make a sale, you would get \$12 million.  
17 But if it's the toggle option, you guys get the \$11 million.  
18 Is that correct?

19 A That is correct.

20 Q What do you guys get if it's a Chapter 7 liquidation?

21 A I would need to go through. I believe it's still  
22 covered under -- I don't know the answer. I would have to  
23 go back through our engagement letter.

24 Q Okay. Yesterday the BRG witness confirmed for me that  
25 for every \$20 million in recovery, it pretty much only

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1 want to spend a lot of time on, you know, asking you too  
2 many questions about the past. But I know that I and  
3 several creditors are curious, did you guys entertain bids -  
4 - because it seemed like you guys attempted to entertain  
5 bids that were heavy cash up front bids versus long-term  
6 plans even if they weren't heavy cash upfront. But in say a  
7 year or two, in the long term, the creditors would be able  
8 to recover like a hundred percent of their assets because  
9 the company let's say providing the long-term plan, you  
10 know, maybe they're getting, like, 60 percent of our assets  
11 now, but then they provide incentives to stay on the  
12 platform because they're actually saving the Voyager app  
13 versus killing it, they're actually saving VGX versus it  
14 dying off. It's saving all of these things. And then they  
15 have all these upsides so that in say a year or two, we  
16 would have made whole. Did you guys, one, have those kinds  
17 of bids, and two, did you seriously entertain them?

18 A We had a range of different types of proposals. We did  
19 receive certain proposals including, for example, equity  
20 components to them. But I want to be clear, with proposals  
21 that also included equity components, it wasn't like in that  
22 instance the parties were getting a hundred percent of the  
23 equity in that business. Right? And I think that's  
24 something that sometimes may be missed.

25 And so the short answer is yes, we did entertain

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proposals like that. We evaluated them. We evaluated a number of different types and forms of proposals. We had some with earnouts, we had some with up-front cash considerations. We had some with trading credits. You know, every form and flavor.

And so one of the things that we did -- and again, in agreement and in consultation also with the UCC and their advisors around this is, you know, sought to evaluate and compare those. And one of the things that doesn't always necessarily come up is as we were evaluating those, we were also factoring in dynamics of counterparty risk and feasibility as well. You know, if you're establishing a new newco, for example and we were to transfer all the assets over there, we wouldn't want to be in a situation where that business wasn't appropriately capitalized, right? And so one of the things relating to that is that, well, people may think I would have an ability to, for example, participate in potential upside of the platform, you know, we also evaluated what does that platform look like, what are the business lines associated with that, do you think that that would be compliant from a regulatory perspective in light of what's going on with the underlying industry. What is their business plan associated with it? We didn't want to do a transaction with a party we didn't think necessarily had fully fleshed out and thought through all of the really

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Q Okay. And earlier when you were answering a question regarding backup bids, was I correct in hearing that you said that there weren't any other companies -- so we determined that Binance was the second-highest bid, but they did not want to be considered a backup bidder. But say the third-highest bidder and so on, were they asked to be a backup bidder and they also refused?

A That's correct.

Q I was trying to understand how you were answering that question.

A You are correct. And there were extensive negotiations around these exact points at the auction. This is one why we had an 11-day auction in part because of these exact types of dynamics. But that's correct. There was no party that was willing to be a backup bidder.

Q Okay. So you did ask, and they all refused is what you're saying.

A Yes, correct. And I want to be clear on the Binance one, there was a contingency that would not have qualified them to be a backup bidder. So you had a backup bidder proposal, but it would require the estate paying an expense associated with that that was not approved under bid order and is highly, highly atypical. And so it was not accepted as a backup bid at that point.

Q Yeah. And I guess --

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critical dynamics of overhead, staffing, employees. There's a lot of factors, right? Do they have an exchange that they operate, do they not?

And so we took all of that, we evaluated it. We sought to place value on equity components, for example, in valuating bids. You know, the firm, we have a structure around what that looks like. But these are things that we thought through. They were key considerations. There were very long debates and discussions around it. And ultimately the plan that we put forward was one that was focused on what we thought was a value-maximizing proposal that provided the best outcome for people that also didn't take money out of their pockets either, right? And that's what I was getting at with the capitalization element, is to the extent that let's say we have a billion of crypto, we needed to hold back, I don't know, \$150 million in order to capitalize that entity, that's money that you don't receive today. Right? And you would get in the equity and hopefully that succeeds. But there's always a risk that it doesn't. And so these were all things that we thought long and hard and had very extensive debates with our board about, we had very extensive debates with the advisors about.

So to answer your question in a longwinded way, we were not dismissive of anything that came forward.

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A that was the only one that was --

Q Okay, now you confused me by saying that's the only one that was available.

A Well, to the extent that --

Q I thought we just --

A So to the extent that the Debtor would have tried to have accepted that backup bid or plan, there would have been additional proceedings relating to trying to pay an expense reimbursement, for example, that was not approved. And as I said, it is highly, highly atypical to that type of a feature. So at that point in time based on the facts and circumstances, we didn't seek to try and move forward on that basis.

Q Oh, okay. I think I understand what you're saying.

What you're saying is let's just say five, we asked five of the bidders do you want to be a backup bidder. All of them said no except for Binance. Binance said yes, but only contingent upon if you pay us to be a backup bidder. And you guys are like no, we don't want to do that. And so that's why they were not chosen to be a backup bidder. Is that correct, how I understand --

A That is a fair characterization, yes.

Q Okay.

A And the number of parties is a little off, but yes, that's a fair characterization.

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Q Yeah. I just threw an easy number out there. Okay. I'm just looking at my notes real quick to make sure I got all my questions. I think I do. Okay, yes. Thank you. I'm done.

THE COURT: Thank you very much. Is there anybody else on the phone who desires to cross-examine the witness?

All right. Did the Committee have questions --

MR. JONES: Yes. Seth Jones.

THE COURT: I'm sorry, who is that?

MR. JONES: Seth Jones. I have a few questions.

THE COURT: All right. Go ahead, Mr. Jones.

BY MR. JONES:

Q So you negotiated a \$12 million contract with Voyager. What value did you expect to bring back to the estate in the bankruptcy process?

A I'm sorry, could you repeat that? I wasn't able to hear this voice.

Q When you negotiated a \$12 million contract with Voyager, what value did you expect to bring back to the estate in this bankruptcy process?

A We negotiated what we viewed was an arms length fee. I know that there were also discussions with the UCC around that. We looked at comparable situations.

You know, I think one thing to remember here too, right, is that there's upfront consideration and there's

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obviously things changed and there was a lot that evolved over the course of this case. Would I have, in hindsight looking back in June, expected that in the interim, FTX was the second-largest exchange and an individual would get in front of congress and testify to the nature of the business to collapse? No. But, you know, we sought to maximize value throughout. And again, I think the foregone value in a lot of ways is also what we think is a really important element to the plan. It's been a very key consideration from our perspective.

Q (indiscernible) granted permission to start rebalancing the coin from January 10th. One of the professionals I believe was BRG during the first APA disclosure hearing. But they estimated it would cost \$30 million in slippage fees and one month to rebalance the portfolio. And they said they planned on starting in early February. Why has this process not started right away to start breaking down the liquid assets into smaller blocks and not disrupt the markets?

A So we have sought to not disrupt the market. We wanted to make sure that we were fully coordinated with the UCC on what the options were going to be for purposes of rebalancing. We engaged with various market makers, we solicited a number of different proposals. We compared those. We have obligations even under the APA relating to

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also value in other forms. Right? And so when we think of the value pot, we understand that there is a view around the upfront consideration from the purchase price perspective being, you know, in this case \$20 million. But there's -- it's not really a \$20 million purchase. And I think the way that we have always viewed this is that it's a billion-point-zero-two-two -- it's 1.022 billion from a consideration perspective because we have to figure out what to do with the crypto and we have to figure out how to operate the business and we have to figure out how to maximize value. And so we ran a gauntlet of different scenarios and processes and ran everything down in order to try and make sure that we were maximizing value.

Because for example, you know, you could see a situation where somebody would say, well, why don't I just do a block trade on the crypto portfolio and run it like a Chapter 7 liquidating trustee would. Well, you know, we had discussions with market makers who actually literally participated in some of the U.S. Marshal auctions relating to liquidations of crypto portfolios that they received in connection with seized assets, for example, like Silk Road. And they gave us views on where the discounts were that they participated in those deals. And so we ran down everything and tried to run down various structures, various proposals.

Obviously I think in light of what happened with FTX,

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(indiscernible) that Binance had negotiated for in connection with some of those transactions.

And to be clear, the fees that are being paid from a commission perspective are in our minds likely to be very, very low here. And I say that in the sense that based on the way that we are doing the rebalancing, based on the way that the trades are occurring, you know, they are likely to be in the very, very, very low single digits from a commission --

Q So single digits? This slippage is not going to be \$30 million?

A If we have to pivot to, for example, a toggle plan, they could be more based on the liquidation of the alternative -- or the unsupported coins to the extent they need to be done in block trades. The strategy that the Debtor is pursuing right now is one that we believe would reduce the level of commissions and would optimize around the outcome to try to limit any movements that the transactions would ultimately have on the market itself.

Q So is that inaccurate, the \$30 million?

A Excuse me?

Q Is it -- was the number -- is the \$30 million inaccurate?

A So I think the \$30 million was initially for and may have been a bit of a misrepresentation. I think that that

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1 was meant to not be necessarily commissions. It was meant  
 2 to include other elements --  
 3 Q Slippage fees.  
 4 A Excuse me?  
 5 Q I said slippage fees.  
 6 A Yeah, that's right. And slippage is different than  
 7 commissions though.  
 8 Q Slippage fee for illiquid coin. (indiscernible). No,  
 9 it's not including commission. (indiscernible) my slippage  
 10 fees (indiscernible) illiquid assets.  
 11 A Yes. And slippage though is different than commission,  
 12 right? And so when I talk --  
 13 Q Yeah, absolutely.  
 14 A Yeah. And so when -- you know, I believe the numbers  
 15 that were reported yesterday had been based on just the  
 16 market prices in all crypto to the extent that effectively  
 17 let's say the rebalancing has already occurred, right? It  
 18 hasn't fully completed yet, but there's still --  
 19 Q Yeah. I'm not talking about the (indiscernible). I'm  
 20 talking about how much will it cost in slippage fees. Is it  
 21 \$30 million?  
 22 A Well, we don't know what the slippage is ultimately  
 23 going to be. It's a bit of a -- the one difficulty with  
 24 slippage is that it's kind of a counterfactual, right, in  
 25 the sense that there's no way to measure the impact of just

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1 which is, what \$580 million, that those 35 coins will be  
 2 paid out in pro rata, the difference.  
 3 A I'm sorry, do you mind repeating that?  
 4 Q (indiscernible).  
 5 A I just couldn't hear you. Do you mind repeating that?  
 6 Q You talked about the 135 million in the 35 unsupported  
 7 coins. Is that number before or after you have to liquidate  
 8 the \$445 million FTX holdback and the \$135 million winddown  
 9 that has to be liquidated to U.S. dollars?  
 10 A Yeah, I think I understand your question. I don't know  
 11 the answer to that. I would have to check the exact  
 12 figures. I understand the nature of your question. I don't  
 13 know the specific answer.  
 14 Q So it could be a lot less to liquidate you're saying  
 15 (indiscernible).  
 16 A I don't -- look, I don't believe so, but I don't know  
 17 the answer. I would have to check.  
 18 Q You talked about maximizing value. Why have the  
 19 partners been forced into a high stakes casino in this  
 20 volatile market instead of giving their assets back  
 21 immediately? Waiting nine months. Creditors have lost the  
 22 right to appreciation of a specific asset they originally  
 23 invested in.  
 24 A So I think --  
 25 Q I believe it was a lie (indiscernible) was willing to

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1 slippage in the sales of any individual token relative to  
 2 broader price movements in the underlying market. And so  
 3 what we try to do is by doing the transactions over a  
 4 prolonged period of time and being very careful and managed  
 5 in how much individual trades are occurring in given day and  
 6 any given token, in any given market at any given exchange  
 7 is to make sure that by doing it over such a long period,  
 8 our view is that it is likely to inherently limit any  
 9 ability of individual trades to likely have an impact. But  
 10 it's an unknown. It's --  
 11 Q So one month was inaccurate too. Are you saying?  
 12 A No, I'm not saying that it's an inaccurate statement.  
 13 I am saying that it's an estimate, and there continue to be  
 14 estimates around figures relating to unknowns based on where  
 15 the market is moving. Just like the recovery is an  
 16 estimate. We do not know ultimately what the value would be  
 17 of the portfolio at the time that the rebalancing finishes.  
 18 The percentage recoveries are still going to move. They're  
 19 going to move based on --  
 20 Q Absolutely.  
 21 A -- (indiscernible) that we know happened last night.  
 22 Q Absolutely. All right. You talk about \$135 million in  
 23 the 35 unsupported coins. Is that number before or after  
 24 the 445 million holdback in FTX and the \$135 million  
 25 winddown trust that has to be liquidated into U.S. dollars,

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1 help you out with that.  
 2 A Sorry, are you talking about in July or at the FTX  
 3 proposal?  
 4 Q Yeah, or any time. Yeah.  
 5 A Well, I think in hindsight we're pretty happy that we  
 6 didn't go forward with FTX in July.  
 7 Q Well, absolutely. But that's not decision-making  
 8 correctly, obviously.  
 9 A At the time --  
 10 Q You want to talk about hindsight, what about the  
 11 Binance deal? Are we going to be saying the same thing in  
 12 the future?  
 13 MR. SLADE: Your Honor, object. We're getting  
 14 speeches, not questions.  
 15 THE COURT: I'm sorry, Mr. Jones. I'm not sure  
 16 what your question is.  
 17 MR. JONES: He wants to talk about hindsight  
 18 saying thank god we didn't (indiscernible) the FTX deal or  
 19 didn't (indiscernible). But now he wants to talk about  
 20 Binance is okay. Are we going to be saying the same thing  
 21 in the future?  
 22 THE COURT: Well, okay. I can sense from your  
 23 tone and from your question that you have your own point of  
 24 view of that situation. But remember, please, what we're  
 25 doing right now is we're taking evidence. We're asking

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questions of the witness about the proposals that are in front of us. So let's try to focus on that. Okay? Do you have another question for this witness?

MR. JONES: No, that's it for now. I appreciate it, Judge. Thank you.

MS. TREVINO: I have a question.

THE COURT: All right. Who is this? I'm sorry?

MS. TREVINO: My name is Lisa Trevino. I am pro se. I have a few questions, please.

THE COURT: Yes, please. Go ahead.

BY MS. TREVINO:

Q Mr. Tichenor, I just have a few questions for you, please. And then maybe one follow-up depending on your answer.

What happens if the part two of the claims that we received from Stretto, the email, the claims email, what happens if the part two of the claims amount are found to be inaccurate in any way? How would those affect recovery rates?

A I don't know exactly what the part two claims are.

Q Okay. So just to clarify, the Judge, before this hearing that started yesterday, the last hearing, he discussed that specifically. I asked the Judge this and he said part one is for voting and part two is --

THE COURT: Oh, I think I know what you mean. You

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example, we are aware of the mid-20 percent numbers that are being quoted relative to where we are now in light of -- you know, to the extent that the Alameda claims end up being valid. And so I think that's probably the biggest one. But in truth, I don't entirely know. But in some instances, I would say probably time is going to be the biggest one. So, for example, to the extent that we continue to perform due diligence moving forward, end up selecting to move to a toggle, and it's several weeks from now. And then if operationally things weren't in place to be able to properly execute it, it may result in a delay. But that to me is probably the biggest one if I were to think of (indiscernible) outside the crypto portfolio value. But, look, it's tough to know. It's an unknown, right?

Q Okay. My second question would go to Mr. Tichenor.

What is your opinion specifically, like we asked the other witnesses yesterday, your own opinion of the 445 million clawback (indiscernible), do you feel that this is a right and just situation?

MR. SLADE: Your Honor, I would object.

THE COURT: Yeah. First of all, that's a legal question. Second, I'm not sure that it's in anybody's interest to ask the Debtors officially in sworn testimony whether they think their litigation adversary is going to win or lose. They probably will want to continue to put

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mean the objections to the substance of the claims. Yeah. The percentage results are based on the Debtor's estimates of where that will turn out. If the allowed claims are higher than the Debtor estimates, then the recovery percentages will go down. But that will be true proportionally no matter what we do. Right? Because it will just be -- the allowed claims will be the same as they would be in Chapter 7 as they would be under a toggle plan, as they would be under a Binance proposal.

MS. TREVINO: Okay. So I guess the follow-up question to that, Your Honor, would be are there any other situations or any other than what has been discussed over the past two days that would affect the recovery rates that we have not heard?

BY MS. TREVINO:

A That's a good question. There are factors potentially from timing perspectives. I mean, it's always very difficult to know exactly what's going to happen in the future. I think we tried to outline the key elements. And I think probably the biggest one is just volatility in cryptocurrency prices. Effectively the estate (indiscernible) a very large pool of cryptocurrency. We are seeking to distribute that obviously in kind and do the rebalancing trades in connection with that. But it creates volatility in recoveries and it's a large part of why, for

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forward the strongest defense that they can without being put to that kind of testimony under oath any more than Alameda would want to testify as to what it thinks its risks are. So I think I'll have to sustain the objection to that question. I hope you understand why.

MS. TREVINO: I do. Thank you very much, Your Honor.

THE COURT: All right.

MS. TREVINO: That's all for now from me.

MS. RYAN: Your Honor, I may. This is Ms. Ryan from the State of Texas. I have one question that I just thought of.

THE COURT: I think you -- I think you had your chance. But does anybody object to Ms. Ryan asking another question?

MR. SLADE: If it's just one, it's okay, Your Honor.

THE COURT: Okay. You've got permission to do just one, so choose it carefully.

MS. RYAN: Thank you. I will.

BY MS. RYAN:

Q Mr. Tichenor, in doing due diligence into Binance, did you come across any company agreement between Binance.US and Binance.com that could affect Binance.US's performance?

A And by performance -- so I just want to make sure I

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1 understand the question. We reviewed the agreements between  
2 them that we were of the commercial agreements in nature.  
3 You know, I can always think of hypotheticals that could  
4 impact things. But we did review the nature of those  
5 agreements and the ability, for example, of -- and we asked  
6 this question very point blank, the ability of Binance.US to  
7 continue to operate as a standalone business to the extent  
8 that Binance.com didn't exist.

9 Q Thank you. That was all.

10 THE COURT: Okay. Anybody else on the phone who  
11 has questions for Mr. Tichenor? All right.

12 Does the Committee counsel have questions?

13 MR. EVANS: Yes, Your Honor. This is Joseph Evans  
14 from McDermott Emery on behalf of the committee of unsecured  
15 creditors.

16 BY MR. EVANS:

17 Q Good afternoon, Mr. Tichenor.

18 A Good afternoon.

19 Q There's been a lot of discussion today about whether  
20 the Binance deal closes. Do you recall that?

21 A I do.

22 Q And you referred to something called a fiduciary out.

23 A I hope I did.

24 Q What's a fiduciary out?

25 A So a fiduciary out is that as structure of the APA, we

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1 judgement of the Debtor to make that kind of determination.

2 Q Okay. And are you familiar with the amended APA?

3 A I am.

4 Q Okay. You don't recall what 8.1(g) says I'm sure.

5 A I don't recall specifically 8.1(g).

6 Q Do you happen to have it in front of you? I have a  
7 copy here.

8 A Is it Exhibit 9?

9 MR. EVANS: Your Honor, to refresh the witness's  
10 recollection, I would like a copy of the amended APA. It's  
11 Document Number 835.

12 THE COURT: Go right ahead.

13 MR. SLADE: It's Exhibit 9.

14 BY MR. EVANS:

15 A Which specific provision?

16 Q This is the second blue tab. It is 8.1(g).

17 A 8.1(g). Yeah.

18 Q So if you turn to the page right before it, which is  
19 Page 63 of the contract. Article 8 is labeled Termination.  
20 Do you see that?

21 A Yes.

22 Q Okay. And it says this agreement may be terminated  
23 only in accordance with this Section 8.1 Do you see that?

24 A I do.

25 Q Turn to the next page, subsection G. It states, "By

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1 have an agreement to move forward with Binance.US to  
2 consummate a transaction. A fiduciary out allows for the  
3 Debtor, to the extent that there is a proposal, even in the  
4 interim prior to any closing, to evaluate and potentially  
5 move forward with that party to the extent that that  
6 transaction is viewed as being higher or otherwise better  
7 than the existing Binance.US deal.

8 So up until the point where the transaction closes, you  
9 could theoretically still move forward with a different  
10 alternative?

11 Q Suppose there wasn't another alternative. But suppose  
12 you found out something bad about Binance that made the  
13 Debtors uncomfortable with the deal. Is there a method by  
14 which the Debtors could not close the deal?

15 A We would exercise the fiduciary out and pivot to the  
16 self-liquidating toggle at that point because on that basis,  
17 the Debtor would argue that on a risk-adjusted basis, that  
18 transaction would be higher or otherwise better than the  
19 Binance.US transaction.

20 Q Only if whatever was found out about Binance rose to  
21 the level that the professionals and the Debtors believed it  
22 was in their fiduciary capacity to not go forward with the  
23 deal. Is that right?

24 A I believe we have quite a bit of flexibility around  
25 ultimately what that would look like and the business

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1 written notice from seller to purchaser, which may be  
2 revocable in the sole discretion of seller by written notice  
3 of seller to purchaser within five business days of seller  
4 or the board of directors or similar governing body of  
5 seller determine in good faith and after consultation with  
6 legal and other advisors that proceeding with the  
7 transactions or failing to terminate this agreement will be  
8 inconsistent with its or such persons or body's fiduciary  
9 duties. Do you see that?

10 A I do.

11 Q And is that the fiduciary out that you were  
12 referencing?

13 A That is.

14 Q Okay. You can put it down for now. There was a lot of  
15 discussion today about the diligence that Moelis and other  
16 professionals performed on Binance.US. Isn't that right?

17 A There has been a little bit, yeah.

18 Q And there was also some discussions about  
19 representations made by Binance.US to you and the other  
20 professionals. Isn't that right?

21 A That's correct.

22 Q And you did other due diligence, but in part you relied  
23 on some of those representations, didn't you?

24 A Absolutely.

25 Q Okay. One of those representations was that Binance.US

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1 holds the digital assets deposited by its customers on  
 2 Binance.US's platform solely in a custodial capacity and on  
 3 a one-to-one reserve basis. Do you remember that?  
 4 A I do.  
 5 Q What's a one-to-one reserve basis?  
 6 A So a one-to-one reserve basis is that to the extent  
 7 that have one bitcoin due to a customer, they had one  
 8 bitcoin that was held in custody on the platform. So  
 9 effectively you could never have a quote, unquote, run on  
 10 the bank because effectively all that would happen is people  
 11 would just withdraw the crypto. It would be very similar to  
 12 if a bank only had cash and the parties were seeking to  
 13 withdraw all the cash.  
 14 Q And so if Binance is stating to you that crypto was not  
 15 held on the one-to-one reserve basis, would that materially  
 16 change -- if it was false, would that materially change your  
 17 opinion on whether this transaction should go forward?  
 18 A To the extent it was lower, absolutely. If it were  
 19 higher and for some reason they chose to overcapitalize  
 20 customers' accounts, I'd feel pretty good about that. But  
 21 to the extent that it was lower, absolutely. It would  
 22 materially impact our view.  
 23 Q And there were some discussions yesterday about, well,  
 24 how is Binance.US holding crypto any different than Voyager  
 25 did. If you know, did Voyager hold crypto on a one-to-one

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1 the Binance platform under their terms of service subject to  
 2 their staking provisions. But from the lending perspective,  
 3 to be clear, yes, my understanding is they expressly  
 4 prohibit that.  
 5 Q Okay. There was some discussion today and yesterday  
 6 about BAM Trading Service Inc., DBA Binance.US, the Delaware  
 7 Corp., versus what's known as Binance Global. Do you  
 8 remember that?  
 9 A I do.  
 10 Q the purchaser is the U.S. entity, BAM Trading Services.  
 11 Isn't that right?  
 12 A That's correct.  
 13 Q When you were evaluating the ability to close the  
 14 transaction, were you evaluating the finances of BAM Trading  
 15 Services Inc, or were you evaluating the finances of the  
 16 overall Binance?  
 17 A We were evaluating the finances of BAM Trading Services  
 18 Inc., which is a standalone business as we understand it  
 19 separate and apart and away from Binance Global, which is a  
 20 separate company from our understanding.  
 21 Q When you reviewed the audited financial statements and  
 22 the unaudited financial statements of BAM Trading Services  
 23 Inc., those were BAM Trading Services Inc. only, not --  
 24 A That's correct.  
 25 Q And there was some discussion about the corporate

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1 reserve basis?  
 2 A Not to my knowledge. Or they rehypothecated it and  
 3 that's why we're in the situation that we're in today.  
 4 Q Let's talk about that word, rehypothecate, for a  
 5 second. What's rehypothecate?  
 6 A So rehypothecation is the ability to take collateral  
 7 that a party may have posted on a platform. It's very  
 8 common in the traditional securities sense where if you have  
 9 a margin account at an equity trading platform,  
 10 rehypothecation is the ability to use those funds and to be  
 11 able to lend them out to somebody that is seeking to borrow  
 12 them.  
 13 So in the sense of Voyager, as people think about their  
 14 crypto, it's why all of the crypto is property of the  
 15 estate, is so that they can rehypothecate it and lend it to  
 16 other parties.  
 17 Q And it's your understanding based on representations  
 18 made to you on diligence you performed that Binance.US does  
 19 not rehypothecate customer crypto. Isn't that right?  
 20 A That's correct.  
 21 Q And just to be clear, that means Binance.US does not  
 22 lend customer crypto to anyone.  
 23 A That is my understanding.  
 24 Q No lending, no staking, nothing. Right?  
 25 A So customers I understand can elect to stake through

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1 structure. Is Binance global the sole shareholder of BAM  
 2 Trading Services Inc.?  
 3 A No. And it is opposite of representations that have  
 4 been made to us based on our understanding of the  
 5 organization chart and ownership interests of the business.  
 6 Q Let me just make sure -- because the representations I  
 7 didn't get. So what you're saying is Binance Global is not  
 8 the sole shareholder of BAM Trading Service Inc., right?  
 9 A Correct.  
 10 Q Okay. But in determining whether BAM Trading Services  
 11 Inc. had the financial capability to close, you didn't just  
 12 take their word for it, right? You looked at information?  
 13 A We did. We requested a proof of funds, which is a bank  
 14 statement that they provided from their bank. And we even  
 15 reviewed the nature of the bank to make sure that we felt  
 16 comfortable with that.  
 17 Q So you actually looked at a bank account statement that  
 18 said we have enough cash to close?  
 19 A We did.  
 20 Q Who is Changpeng Zhao?  
 21 A He is the founder of Binance.com and he is the UBO of  
 22 both Binance Global as well as Binance.US.  
 23 Q Okay. There were some questions about the ability of  
 24 Binance Global to make decisions concerning the customer  
 25 assets held at BAM Trading Services Inc., Binance.US. Do

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1 you recall those questions?

2 A I do.

3 Q There was representation made to you, was there not,

4 that only employees of Binance.US., not Binance Global, are

5 able to move or withdraw customer crypto from Binance.US's

6 platform. Do you remember that representation?

7 A I do.

8 Q Now, when they made that representation, you also asked

9 some follow-up questions about this representation, didn't

10 you?

11 A Of course we did.

12 Q And it was over the course of multiple sessions, right?

13 A Many, many sessions.

14 Q And did you ask, for example, does CZ have the power to

15 take customer crypto out of BAM Trading Services Inc?

16 A We did.

17 Q And what was the response?

18 A No.

19 Q Separate from the responses, you've viewed policies,

20 procedures, and protocols? Have you asked questions about

21 how the information security works?

22 A We did.

23 Q Did anything in your view call into question whether CZ

24 had the power to take customer crypto from Binance.US and

25 move it to Binance Global?

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1 said. Do you recall that?

2 A I do.

3 Q Okay. So along with the policies and procedures, you

4 also received two security reports from independent third

5 parties. Isn't that right?

6 A That's correct.

7 Q And I just want to clarify the record because there was

8 a question that was asked to you by the SEC, and it was --

9 there was a bunch of questions. But one of the things you

10 said was when you sought to get representations, that was

11 the work that we did. That wasn't all the work that you

12 guys did, right?

13 A No, that's correct. We did more work than just seeking

14 to get representations.

15 Q Okay. Like, for example, you reviewed the security

16 report from December of 2022, isn't that right?

17 A I did.

18 Q And you reviewed another security report from June 1st,

19 2022.

20 A That's correct.

21 Q and those reports were all issued by independent third

22 parties, not Binance. Isn't that right?

23 A That's correct.

24 Q On February 16th, 2023, there was an article issued by

25 Reuters about Binance concerning an entity called Merit

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1 A We were always concerned about the ability of somebody

2 that was associated with Binance Global to be able to remove

3 crypto out or assets from Binance.US.. And it came up in

4 multiple discussions.

5 Q So you were concerned as it was a topic of diligence,

6 correct?

7 A Yes.

8 Q When you do all this diligence and you did these

9 interviews and you reviewed the policies, did you see

10 anything that indicated to you that CZ had the power to take

11 customer crypto out of BAM Trading Services Inc. and move it

12 over to Binance Global?

13 A No. And if anything, what we understand to be the case

14 is that no individual has an ability to move -- no specific

15 individual can move crypto out.

16 Q Okay. There was a couple of questions -- and let me

17 just ask the same question for Binance Global generally

18 based on your review of the policies and procedures, your

19 interviews. Do you have any reason to believe that Binance

20 Global can direct Binance.US to take customer crypto out of

21 Binance.US and send it to Binance Global?

22 A Based on the representations that were made to us, I

23 have no basis to believe that's the case.

24 Q Earlier today, the SEC raised some questions about

25 security protocols and how you know stuff like what you just

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1 Peak. Do you remember that media report?

2 A I do.

3 Q And in that media report, there was an allegation that

4 \$400 million was withdrawn from a bank account at Binance.US

5 to Merit Peak. Do you remember that?

6 A I do.

7 Q When you saw that article, what did you do?

8 A We immediately reached out to Binance.US to ask them

9 about the nature of the article, to immediately schedule

10 diligence discussions. And I believe the next day we were

11 beginning to have conversations with them about it.

12 Q And it wasn't just Moelis, right?

13 A Not just Moelis, yeah.

14 Q It was Moelis and a variety of other professionals that

15 were asking. Each of them had different questions, right?

16 A That's correct, yeah. I mean, I know for a fact on

17 that specific item, it did involve Moelis, it involved

18 Kirkland, McDermott, FTI, BRG. All of the advisors.

19 Q In connection with I'll call it the Merit Peak

20 diligence, there were a number of meetings with Binance

21 executives, wasn't there?

22 A There have been, yes.

23 Q And document requests?

24 A Yes.

25 Q And ultimately there was an in-person meeting the day

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1 before the first hearing where two Binance executives went  
 2 through all the Merit Peak information. Isn't that right?  
 3 A That's my understanding. I wasn't in attendance at the  
 4 meeting.  
 5 Q You didn't attend, but people on your team did attend.  
 6 A Correct. There were individuals from Moelis who  
 7 attended, yes.  
 8 Q And in that meeting based on what you know from your  
 9 team, transaction data was shown to us.  
 10 A That's my understanding, yes.  
 11 Q And there was analysis done of deposits versus  
 12 withdrawals. Isn't that right?  
 13 A That's my understanding, yes.  
 14 Q And there were representations by Binance that  
 15 everything that they showed us was accurate. Is that right?  
 16 A That would be an important one, yes.  
 17 Q Okay. And there were three critical representations in  
 18 my view, but also you have to say. One, Merit Peak --  
 19 THE COURT: Counsel, there haven't been any  
 20 objections, but I think just the form of that question  
 21 without going further I am going to have an objection to.  
 22 MR. EVANS: Okay. I'll ask this -- withdrawn.  
 23 Sorry, Your Honor.  
 24 BY MR. EVANS:  
 25 Q Did Binance represent that Merit Peak did not withdraw

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1 onboarded with Binance.US, crypto gets released on a weekly  
 2 basis. Isn't that right?  
 3 A That's correct. So my understanding is that a customer  
 4 would have to be a customer of Binance.US They would have  
 5 signed up. They would have done their KYC. At that point  
 6 in time, on a weekly basis crypto would be transferred in  
 7 bulk transactions. And part of that is to also minimize  
 8 friction costs. We're aware of things like gas fees, for  
 9 example, that could occur on a one-off basis. And so upon  
 10 that customer signing up, they are allocated crypto on a  
 11 weekly batch, would be transferred over, and then  
 12 subsequently deposited into their account.  
 13 Q Why is that safer for customers than the original deal  
 14 that was proposed?  
 15 A It's safer for the customers that choose not to migrate  
 16 to Binance.US, for example, or who have yet to establish  
 17 accounts. And so in the context of let's say a bankruptcy  
 18 to the extent there was fraud or theft of funds, for  
 19 example, and there were issues that we were unaware of or  
 20 unable to diligence, in that instance, the customers would  
 21 have signed up for the account. We probably have the  
 22 ability to monitor or we planned to monitor the transactions  
 23 as they were coming. But it limits the Debtor as the estate  
 24 and their exposure to a counterparty until the point where  
 25 the sale should have occurred and the transfer should have

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1 customer fiat or crypto?  
 2 A They did.  
 3 Q Did Binance represent that Merit Peak nor any other  
 4 market maker had the ability to withdraw customer fiat or  
 5 crypto from the Binance.US platform?  
 6 A They did.  
 7 Q Did Binance represent that Merit Peak no longer  
 8 conducts any activity at Binance.US?  
 9 A They did.  
 10 Q There were some questions raised about FTX, the FTX  
 11 deal versus Binance. Do you recall those?  
 12 A I do.  
 13 Q When the Binance deal was getting negotiated, it was  
 14 substantially different than what it is now, isn't it?  
 15 A It evolved over many, many months. Yes.  
 16 Q Okay. And in fact at first the deal was all of the  
 17 customer crypto would go over to Binance.US and they would  
 18 hold it until the customer was on board with Binance.US and  
 19 then get released to them. Isn't that right?  
 20 A That's correct.  
 21 Q Okay. And the committee and other professionals  
 22 objected and pushed for a different way to distribute the  
 23 assets. Isn't that right?  
 24 A That's my recollection, yes.  
 25 Q And so the plan now is that once customers get

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1 occurred and they are a customer of that entity.  
 2 Q Is that because customers want to withdraw their crypto  
 3 from Binance as quickly as possible, that customer's crypto  
 4 is only exposed to Binance for a short period of time?  
 5 A In part, yes. Yeah.  
 6 Q You became aware of the letter issued by a couple of  
 7 congresspeople in the United States Senate.  
 8 A Three senators, yes.  
 9 Q Three senators. That's right. When did you become  
 10 aware of that?  
 11 A Late last night, around 10:00.  
 12 Q And you've read it I presume?  
 13 A I have.  
 14 Q Okay. Would you describe the diligence on this senate  
 15 letter as ongoing?  
 16 A I would.  
 17 Q Did you talk to Binance about the senator letter?  
 18 A We spoke this morning with them. Not just Moelis, but  
 19 all of the professionals in the case.  
 20 THE COURT: Does anyone want to put that letter in  
 21 evidence so that we have some context about what all this  
 22 testimony is about?  
 23 MR. SLADE: Certainly, Your Honor. We would offer  
 24 the letter as Exhibit 25.  
 25 MR. EVANS: Your Honor, I have a hard copy for you

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1 if you're interested.

2 MR. SLADE: Obviously, Your Honor, not for the  
3 truth of any of the matters asserted.

4 THE COURT: Obviously not for the truth of what's  
5 asserted, but just to put in context what the testimony has  
6 been about.

7 MR. BRUH: Your Honor, Mark Bruh for the United  
8 States Trustee. Could we just get some clarification? Is  
9 this the Committee's witness or is this the Debtor's  
10 witness? Because the line of questioning seems a bit  
11 leading to us.

12 THE COURT: It's the Debtor's witness.

13 MR. BRUH: Okay.

14 THE COURT: If you have objections to questions,  
15 just speak up. Can I see this senate letter that we've  
16 introduced?

17 MR. EVANS: Yes, Your Honor. May I approach?

18 THE COURT: Yes.

19 BY MR. EVANS:

20 Q Based on your conversations with Binance this morning,  
21 is your understanding that they're willing to provide more  
22 diligence concerning this letter?

23 A They have represented that they are willing to continue  
24 to engage in diligence relating to allegations in the  
25 letter.

1 Q And the tweet said maybe we should pull out. Isn't  
2 that right?

3 A That's -- I didn't remember the exact words, but that's  
4 my recollection, yes.

5 Q And it was a link to an article about the SEC's  
6 argument yesterday at this hearing. Isn't that right?

7 A I believe so. There was a lot happening this morning,  
8 and I've been on the stand for quite a while today. So yes,  
9 that's my recollection.

10 Q And then there was a call this morning, wasn't there?

11 A Yes. There were several calls this morning.

12 Q And during that call, a text message was read to you,  
13 wasn't it?

14 A There was a text message that was read to me by a  
15 Binance.US representative around their interests and still  
16 moving forward with the transaction. We also had another  
17 call with the Binance CEO directly this morning in advance  
18 of the hearing relating to the same tweets and making sure  
19 that we have assurances from him as well prior to walking  
20 into the courtroom today around that interest.

21 Q The text message that was read during the call was from  
22 Binance.US's CEO, Brian Shroder, wasn't it?

23 A That's correct.

24 Q And the text message said, "We are not going anywhere.  
25 Binance.US is committed to completing this deal." Is that

1 Q Okay. And if they don't have responses that are in  
2 your view sufficient concerning these allegations, would  
3 that be one of the things that may factor into your decision  
4 to say, well, maybe we should execute our fiduciary out?

5 A There were a number of documents that would ultimately  
6 determine our ability -- or in the determination to exercise  
7 the fiduciary out. There are very serious allegations that  
8 are being made in that letter that obviously caused concern  
9 from our perspectives that would need to be addressed. And  
10 to the extent that we don't feel like they are sufficiently  
11 addressed, it would be one of many factors that would go  
12 into a determination to assess on a risk-adjusted basis  
13 whether or not that is a transaction that is worth pursuing  
14 and moving forward with or exercising the toggle, which the  
15 plan allows for.

16 Q Along with the United States Senate letter, there was  
17 another development this morning, wasn't there?

18 A There was.

19 Q What was that?

20 A CZ, Changpeng Zhao, who is the UBO of both Binance.US  
21 as well as Binance Global, sent a tweet this morning as a  
22 reply to another tweet relating to the Voyager Binance deal  
23 that seemed to have referenced the SEC. It appeared based  
24 on that tweet that they may have been pulling out of the  
25 deal. And obviously that is extremely concerning.

1 correct?

2 A That's my recollection, yes. And that's consistent  
3 with the statements that he then subsequently made to us  
4 directly on another conversation involving all of the  
5 professionals.

6 Q So there was a text message, then there was a phone  
7 call. And during the phone call, Brian said what?

8 A So there were two things. So we had a conversation  
9 with individuals at -- an individual, excuse me, at  
10 Binance.US who had in the first instance read a -- I think  
11 it was either a Slack message or a text message from the  
12 CEO. We then subsequently had a conversation directly with  
13 the CEO, Brian Shroder, given the fact that we wanted to  
14 speak directly about it versus hearsay from one of his  
15 employees.

16 Q And when you spoke to Brian Schroder, did he say the  
17 same thing, that we are not going anywhere, Binance.US is  
18 committed to completing this deal?

19 A He did.

20 Q And was there a request for a sworn statement or  
21 appearance or someone from Binance to say something about  
22 this statement?

23 A My recollection is yes, there was a lot of discussion  
24 this morning, yes.

25 Q Right before this hearing, there was another tweet,

1 wasn't there?

2 A That's my understanding. I was about to get on the  
3 stand when it came out.

4 Q Based on your understanding, if you know. You might  
5 now know. But if you know. CZ tweets, "We are still in  
6 support of the deal and helping returning funds to users as  
7 quickly as possible if allowed to do so."

8 A That's my understanding of the tweet.

9 Q So these representations made to you by Binance.US in  
10 connection with one-to-one reserve basis asset segregation,  
11 the inability of assets to be -- customer assets be moved  
12 off the Binance.US platform at the direction of others,  
13 statements like they want to go forward with the deal,  
14 notwithstanding the CZ tweet. In part you're relying on  
15 those in coming to your recommendations about this plan,  
16 aren't you?

17 A Those are statements that are important for us for  
18 recommending moving forward with the plan. But I do want to  
19 be clear as I said at the beginning of my testimony, there  
20 is still outstanding diligence. I mean, to be very clear,  
21 we would not say that we are in a position to necessarily  
22 until we would feel comfortable around the nature of all the  
23 diligence and the additional allegations. Are those facts  
24 helpful? Of course they are. And the representations that  
25 were made to us by them were critical and even signing an

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1 requested and required that there were additional  
2 representations that are uncommon in the context of normal  
3 APAs around the nature of the operations and their business,  
4 that these are not things that people normally rep to in  
5 APAs, but were critically important for us during those  
6 discussions.

7 Q So I have a pretty basic question. You have a lot of  
8 questions for Binance, still need answers. So do some other  
9 professionals. Why do you support the plan with all these  
10 ambiguities?

11 A So I support the plan with the ambiguities because it  
12 provides us optionality and a path to potentially maximizing  
13 value for creditors. We view this as providing two options  
14 at this point in time. There's plan A which would be an  
15 ability to continue to move forward with the Binance.US  
16 transaction at a future date and time based on additional  
17 work that still needs to be done. And as we said, the  
18 Debtor is not in a position still to be able to close even  
19 if it wanted to tomorrow. There's still rebalancing trades  
20 that need to occur over a multi-week period. Like,  
21 logistically it just will not happen for multiple weeks. So  
22 it provides for that option, which we believe provides for  
23 potentially higher recoveries, and it also provides for a  
24 self-liquidating toggle, which, while a lower recover is  
25 obviously an option that the Debtor could control and

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1 ADA with them in the first instance. So they will be  
2 critical factors to the extent that we do choose to move  
3 forward with Binance. And again, there is still work to be  
4 done. And that decision will not be made for several weeks  
5 and would not be made just by Moelis, to be clear.

6 Q Is it fair to say that you still have questions that  
7 need answers until you're comfortable supporting --

8 A Absolutely. That said, the plan provides for these  
9 options and the plan provides for options, which we think is  
10 critically important. And our understanding that it has the  
11 resounding support of creditors both on the voting as well  
12 as the number of individuals that we understand who have  
13 already pre-emptively signed up for Binance.US, and we're  
14 going to try and get their distributions, which we view as  
15 kind of a quasi vote of support, but...

16 Q Along with the representations made to you either  
17 orally, in writing, or during meetings, there are also  
18 certain representations that are built directly into the  
19 asset purchase agreement, aren't there?

20 A There are.

21 Q Okay. And deciding and evaluating whether the asset  
22 purchase agreement is a good idea or a bad idea, those  
23 representations are important to you, aren't they?

24 A They are important. And I would say during the  
25 negotiation and discussions with Binance around the APA, we

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1 exercise on its own. So it's the ability to have an  
2 embedded backup plan in connection with the highest and best  
3 offer with an embedded backup plan which is the basis for us  
4 feeling comfortable to move forward.

5 Q Let's talk really, really quickly about benefits to  
6 customers. You said that the Binance deal gives about \$100  
7 million more value than the toggle. Isn't that right?  
8 Something like that?

9 A That's correct, yeah.

10 Q What are those -- where does that increase come from?

11 THE COURT: We've done this two or three times  
12 already. Are you about -- are you trying to elicit some  
13 error in the prior testimony?

14 MR. EVANS: No. I'll do it a different way then.

15 BY MR. EVANS:

16 Q You say in your declaration that the sales transaction  
17 provides the highest value currently available under the  
18 circumstances to the Debtor's creditors.

19 A I believe that's what my declaration says, yes.

20 Q Okay. Based on the numbers, do you still believe that  
21 today?

22 A So I believe that based on the numbers, it would provide  
23 the highest path. But I would say that absent clearing  
24 sufficient diligence to feel comfortable moving forward with  
25 that counterparty, that's what we think of as a threshold

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1 matter.

2 MR. EVANS: I have nothing further.

3 THE COURT: Okay. The United States Trustee?

4 MR. MORRISSEY: Yes, Your Honor.

5 THE COURT: Actually, let's just take five  
6 minutes. Okay?

7 MR. SLADE: I'm sorry. You guys already  
8 questioned the witness.

9 MR. MORRISSEY: Your Honor, I stand for two  
10 things. One is I want, without objection of course, the  
11 opportunity to ask one question, plus perhaps a couple of  
12 follow ups, of the witness. And based on something the  
13 witness just said a few minutes ago. And also, I had a  
14 question, Your Honor, about the declaration that you asked  
15 for just after the break.

16 THE COURT: You have a question for me about the  
17 declaration I asked for?

18 MR. MORRISSEY: Well, obviously with inviting  
19 comments from others as well. What I wanted to do --

20 THE COURT: During our break, why don't you talk  
21 to the Debtor's counsel about the questions you want to ask  
22 and see if they object. Because you have already had a  
23 chance at the witness. Okay?

24 MR. MORRISSEY: Thank you, Your Honor.

25 (Recess)

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1 statements along those lines -- I don't know actually is the  
2 answer.

3 Q Thank you.

4 MR. MORRISSEY: Your Honor, that's my only  
5 question for the witness.

6 THE COURT: Okay.

7 MR. MORRISSEY: I didn't know if you wanted to  
8 take my request or recommendation for the declaration that  
9 Your Honor discussed just after the previous break.

10 THE COURT: What is your suggestion?

11 MR. MORRISSEY: Your Honor, as you will recall,  
12 you gave a list of statements that should appear in the  
13 declaration. And I have a request or recommendation that  
14 one be added to it. I discussed it with Mr. Slade.

15 THE COURT: Is the Binance counsel here?

16 MR. SLADE: They are not, Your Honor. I explained  
17 to Mr. Morrissey that what they had asked their client for  
18 authority to make public was in the existing document that  
19 was already a sworn statement. So I'm not sure whether  
20 adding it -- what happens.

21 THE COURT: does the existing document cover the  
22 five points that I mentioned?

23 MR. SLADE: I believe it does, Your Honor.

24 THE COURT: What is the additional point you were  
25 going to ask about, Mr. Morrissey?

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1 THE COURT: Please be seated. I think the  
2 official court rule is that I'm not supposed to have this  
3 coffee in the courtroom. So you are ordered not to rat me  
4 out.

5 MR. SLADE: Your Honor, I did give Mr. Morrissey  
6 at least my permission, if he has yours, to ask his one  
7 question.

8 THE COURT: Go ahead, Mr. Morrissey.

9 MR. MORRISSEY: Thank you, Your Honor.

10 BY MR. MORRISSEY:

11 Q Good afternoon, Mr. Tichenor. Richard Morrissey for  
12 the U.S. Trustee. As I said before the break, I just have  
13 one question for you. You had an exchange with counsel for  
14 the committee a little while ago about the back and forth  
15 with social media messages about people at Binance  
16 threatening to back out and saying no, we're not backing  
17 out. Do you recall that?

18 A I do.

19 Q Is it your understanding that Binance Global, or CZ  
20 himself, either has the power to decide the fate of this  
21 deal at all?

22 A That's a great question. It's one that we asked this  
23 morning. I don't think we've actually come to a full  
24 conclusion on that at this point in time. Where is the  
25 chairman of that entity, I don't know. But I imagine that

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1 MR. MORRISSEY: Your Honor, it's actually related  
2 to one of Your Honor's points. One of Your Honor's points  
3 was that crypto could be transferred only as directed by  
4 customers.

5 THE COURT: Yeah.

6 MR. MORRISSEY: What I was going to suggest, Your  
7 Honor, was a statement as to whether Binance Global has the  
8 power to take customer crypto out of Binance, out of  
9 Binance.US and transfer it to BAM Trading.

10 MS. OKIKE: That's addressed in the...

11 THE COURT: Isn't that covered by saying nobody  
12 outside of Binance.US can access the customer crypto?

13 MR. MORRISSEY: Your Honor, I think that would. I  
14 didn't hear -- I guess I didn't hear Your Honor say  
15 Binance.US when you said that.

16 THE COURT: Yeah.

17 MR. MORRISSEY: That's fine. And again, as Ms.  
18 Okike just said, perhaps that's already in the pre-existing  
19 statement. Thank you, Your Honor.

20 THE COURT: All right, thank you.

21 Any other questions? I think we've -- yes?

22 MR. SLADE: I have no more questions for the  
23 witness, Your Honor. Thank you.

24 MR. GOLDBERG: Your Honor, Adam Goldberg of Latham  
25 and Watkins on behalf of Binance.US I do have one question

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for the witness, and I would like to request a chambers conference regarding Your Honor's request for a statement from Binance.US

THE COURT: I'm not inclined to have a chambers conference I don't think without a really special, good reason. There are so many people interested in this proceeding. Is there really nothing we can talk about on the record?

MR. GOLDBERG: As I think Your Honor is aware, this is a sensitive issue. This is a matter that the SEC is actively looking at as we've seen in this proceeding. And I think the SEC would be welcome to join in this chambers conference with other parties or a sidebar conversation. But that would be our request, Your Honor.

THE COURT: But it's not just the SEC, right? Everybody on the telephone is interested in this. The questions you want to raise with me, you can't do that in a public proceeding? I don't understand.

MR. GOLDBERG: We will do so, Your Honor, if that's what's required. We would request it be discussed in confidence.

THE COURT: Yeah, I don't think I can do that. You know, we are in the middle of a court hearing. So I asked for something in public, so I'm not sure -- my proceedings are supposed to be public. Occasionally if

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THE COURT: I see.

MR. MALIONEK: Good afternoon, Your Honor. Robert Malioneck of Latham & Watkins, sorry to double team, for Binance.US.

I think because of what counsel for the SEC is raising right now, we had anticipated exactly that and the need for that not to go onto the record. We wanted to be able to talk about what we think is the solution to the question that you asked, Your Honor, which is that there have been references to representations that have been made by Binance.US. We would like for those to be able to -- they've already been put into an officer's certificate. Mr. Tichenor has already talked about the fact that the Debtors and the professionals have relied on it. The UCC has asked questions about it. And we simply want to be able to put that into the record, but we want to be able to discuss that with Your Honor first. And I think the issues that counsel for the SEC want to raise before the SEC raises it as part of the proceedings.

So we would invite them into the chambers conference, but we do believe that we actually would need that for purposes of security.

THE COURT: But is that an evidentiary issue that you wish to discuss with me?

MR. MALIONEK: Yes, it is.

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there's a settlement issue or something and everybody who is affected by it is present, then I understand having a chambers conference. But I don't think we have that situation here.

MR. GOLDBERG: Yes, Your Honor. I think the idea of a chambers conference was to have -- explain our rationale for our proposal and how to address the certificate that you've requested and then come on the record and discuss it.

MR. UPTEGROVE: Your Honor, William Uptegrove with the SEC. May I be heard?

THE COURT: Yeah.

MR. UPTEGROVE: Thank you, Your Honor. I only raised my hand because we actually have a similar request that wanted to make of Your Honor. And if I may have a moment to sort of update you on what we've been working on and issues we wanted to update you about. Because it goes along with counsel for Binance's request.

THE COURT: You wanted to update me privately on what you've been working on?

MR. UPTEGROVE: Oh no, no, Your Honor. I wanted to update you publicly right now. But it relates to a similar type of issue as was just being discussed. What I'm going to say -- I am proposing to put this on the record, Your Honor.

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THE COURT: This seems highly irregular. You know, if there is an evidentiary issue and I need to rule on it by only hearing from a few of the parties, then I will do so. But I really don't want to have any presentations of facts at all, or argument at all, or explanations at all. I'll just hear the evidentiary issue. That's the only thing that I can think of that it would be appropriate to step aside separately for.

And who are you suggesting being included in this? The SEC...

MR. MALIONEK: The Committee, the Debtors.

THE COURT: U.S. Trustee?

MR. MALIONEK: U.S. Trustee. And yes, Your Honor, we would simply outline for you our proposal to deal with the evidentiary issue. And then we would expect that afterwards we would come back into the courtroom so that, Your Honor, we could make public what your determination is from the sidebar in conference. In other words, we don't want to hide anything from the public, we simply want to be able to explain the rationale for it in chambers.

MR. MORRISSEY: Your Honor, Richard Morrissey for the U.S. Trustee. I would just raise a general objection on the record for the reasons Your Honor already stated. But obviously if Your Honor rules, we would be happy to participate. Thank you.

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MS. RYAN: Your Honor, this is Ms. Ryan from the State of Texas. We join in that objection.

UNIDENTIFIED SPEAKER: Your Honor, Kevin (indiscernible) on behalf of New York (indiscernible). As do we.

THE COURT: Okay. I've got --

MR. UPTEGROVE: Your Honor.

THE COURT: Yeah.

MR. UPTEGROVE: William Uptegrove for the SEC. Irrespective of whether or not you were to grant Binance's request -- if I may, I was already going to address an issue that I mentioned, which was first, I just want to apologize for any frustration Your Honor had yesterday with our position. We heard your concern. We --

THE COURT: Hang on one second. Are we finished with the witness? Yes?

MR. SLADE: Yes, Your Honor.

THE COURT: Okay. Did you have a question for him?

MR. GOLDBERG: I had one question. And I think depending upon Your Honor's ruling regarding our proposal, it may be helpful to have the witness on the stand.

THE COURT: Well, let's finish with him subject to recall if we need to deal with whatever this other issue is. Okay?

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counsel while they're in the middle of speaking about something. My only concern is that, you know, I'm not sure since we're in the phase of the trial where we're putting on evidence, is counsel for the SEC ready to put on evidence or call a witness? Because otherwise, if it's to give a speech or to give an update or anything along those lines, I'm not sure that this is the proper time to do that. That's part of why we want to be able to have the conference, Your Honor.

MR. UPTEGROVE: Your Honor, I simply have a simple request. If I can just have a minute to make a request.

THE COURT: Okay.

MR. UPTEGROVE: I'm not going to make a speech. I'm not going to make an argument.

THE COURT: Okay. Go ahead.

MR. UPTEGROVE: So Your Honor had concerns yesterday about the SEC's position. We would like to be able to address them. And I'm not going to go into that to address it. I'm going to propose how we think that might be able to be addressed, at least as best as we can address it under the circumstances.

As I indicated yesterday, unlike other parties, there are statutory restrictions on our ability to share non-public information. As I'm sure Your Honor can appreciate, there are also other practical considerations as well. We do, however, want to do our best to address the

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MR. GOLDBERG: Okay. Thank you, Your Honor.

THE COURT: Do you have a question with him in that context?

MR. GOLDBERG: Yes.

THE COURT: Go ahead.

BY MR. GOLDBERG:

Q Mr. Tichenor, you testified that the sale transaction would be roughly \$100 million better for the estate than the toggle. Does that \$100 million include any potential tax benefits or savings that customers may receive by virtue of an in-kind distribution?

A No, it does not.

Q Thank you.

MR. GOLDBERG: That's all, Your Honor.

THE COURT: Okay. All right. Thank you, Mr. Tichenor, you are excused.

There's so much mystery here that it is difficult for me to figure out if I have any proper grounds to have a separate conference when I have objections that are pending to the idea of having a separate conference.

MR. UPTEGROVE: Your Honor, William Uptegrove for the SEC. If I may just continue with what I see as sort of a completely separate request.

MR. MALIONEK: Your Honor, Robert MalioneK again. I do not want to be in the habit of cutting off another

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concerns being raised.

What we would request is that when it's convenient for the Court -- I think Binance would like to do it right now for us because the timing is not important -- either later today or Monday -- if the Court would like to do it now, that is fine. Whenever it's convenient for Your Honor and the other parties, we would request that we be allowed to have an in-camera conference with the Debtors, Binance, and the U.S. Trustee. And we'll defer to the Debtors and Binance with regard to whether the Committee should attend. We would prefer to do it on our part, the SEC, telephonically. But if the hearing is continued to Monday, we're willing to come to New York and be there Monday morning for the in-camera conference.

And what we would like to do there is to be able to address the concern you raised and the grounds for doing that are that we are statutorily limited to what we do in public. There are issues with us disclosing things in public. And we might be able to address some of your concerns in-camera, and then hopefully that's an acceptable way to move forward.

MR. SLADE: Your Honor, Mike Slade for the Debtors. We object to that. Okay? If the SEC wants to put on evidence, they can put on evidence. This is a continual, frustrating issue for us. We don't want the SEC to have the

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1 opportunity to go to chambers and tell Your Honor something  
2 that they're not actually willing to put in evidence and,  
3 you know, perhaps that would influence the result. That's  
4 our concern. So we object.

5 MR. AZMAN: Your Honor, Darren Azman for the  
6 Committee. To the extent there is an in-camera conference,  
7 obviously the Committee would like to participate. I don't  
8 believe the gentleman from the SEC invited us. But I would  
9 like to be invited, obviously.

10 MR. MALIONEK: Your Honor, Robert MalioneK, if I  
11 may. I know you're taking notes. If I may add on.

12 It seems like we may have some joint support for a  
13 request to have this chambers conference with you. From our  
14 perspective, it's only for purposes of explaining an  
15 evidentiary issue and how to resolve it so that there's  
16 perhaps one additional question for Mr. Tichenor that we  
17 could ask and then put something into the record for Your  
18 Honor. We just want to be able to explain what it is. I  
19 think it's -- if the SEC wants to be able to participate in  
20 that, we welcome that and welcome obviously the UCC and the  
21 Trustee, Debtors to join as well.

22 THE COURT: Well, if the purpose of a conference  
23 is to give me information that might address questions I  
24 have raised regarding this transaction and to influence how  
25 I might decide things, it seems very awkward and unusual to

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1 evidence before you, Your Honor, that you asked for. But  
2 there are issues that we need to be able to speak to you in  
3 private about, Your Honor.

4 We don't agree with the SEC that they should be  
5 able to come back into chambers and put in evidence behind  
6 the scenes. We don't think that that's appropriate.

7 MR. UPTEGROVE: Your Honor, William Uptegrove for  
8 the record.

9 THE COURT: Just before --

10 MR. UPTEGROVE: We're not proposing to -- I just  
11 want to be clear.

12 THE COURT: Go ahead.

13 MR. UPTEGROVE: I'm sorry.

14 THE COURT: No, go ahead.

15 MR. UPTEGROVE: I'm sorry, Your Honor. So we just  
16 wanted to be clear about what the proposal is. Because  
17 everyone has said -- not everyone, but the objectors have  
18 said that we were proposing to put in evidence. That's not  
19 the case. What we wanted to do is you had specific  
20 questions that related to the impossibility because the SEC  
21 wouldn't take a position, it wouldn't give you guidelines  
22 about what the SEC thought. So it's not really argument.  
23 I'm not going to -- what we would propose is actually  
24 relatively brief. If we have authority to provide the Court  
25 with information, our strong preference is that we would do

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1 suggest that that be done in private. It's an evidentiary  
2 proceeding. There are times when evidence involves trade  
3 secrets or other reasons why it cannot be disclosed  
4 publicly, but those are very rare. And this is a peculiar  
5 situation, because usually if that's the case, I have some  
6 indication, some evidentiary indication of what it is that  
7 is going to be offered so that I can decide whether it's  
8 something that is so sensitive that it can be considered as  
9 evidence, but people can -- some people otherwise can be  
10 excluded. It seems particularly hard for me to say that it  
11 can be considered in evidence and not only can the public be  
12 excluded, but even people who are other objectors on similar  
13 grounds could be excluded. That bothers me immensely. And  
14 at least some of those people, including the state  
15 regulators, have issued their objections.

16 So having expressed that concern, what can you say  
17 to me?

18 MR. MALIONEK: Your Honor, Robert MalioneK again  
19 just because so many people have been talking, I want to  
20 make sure I'm clear for the record. I absolutely agree,  
21 Your Honor, and join in the objection of the Debtors that  
22 the chambers conference should not be a place to offer  
23 evidence. That's not what we're asking for. This is to  
24 explain the evidentiary basis for how we're going to get  
25 through one rule of evidence that will allow us to put the

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1 it in a way that is narrowly-tailored as possible. And the  
2 other parties may actually want that.

3 But the point is we are not trying to put on  
4 argument. It's not going to be an argument that we're  
5 intending to make. We're not trying to put on any evidence.  
6 But we wanted to answer Your Honor's questions because Your  
7 Honor had what I would characterize as understandable  
8 frustration that, you know, that we couched things in May  
9 and wanted a little more certainty. And so we were  
10 proposing to provide you with the best answers that we can.  
11 And doing it in-camera would be highly preferential.

12 MR. MALIONEK: Your Honor, I'm confused. Because  
13 counsel for the SEC spoke up just now while we're in the  
14 middle of putting on evidence, or hopefully towards the tail  
15 end of putting on evidence, to say that they wanted to  
16 provide you with some information and an update on what  
17 they're working on. I think those are direct quotes. That  
18 sounds like evidence. That's not what we want to get into,  
19 Your Honor, in a chambers conference.

20 We spoke up because we want to be able to -- it's  
21 not put on evidence, but we do want to explain the rationale  
22 for our argument regarding an evidentiary issue so that we  
23 can ask one further question of the witness. That's all.

24 MR. AZMAN: Your Honor, Darren Azman for the  
25 Committee again. I don't know what we're talking about. I

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1 really don't. And I don't know whether to object or not.  
 2 It sounds like there's sensitive information that Binance  
 3 and there's sensitive information that the SEC has. But I  
 4 have a lot of concerns. You've heard all the creditors in  
 5 the past two days raising issues with the lack of  
 6 transparency in this case. So I would have concerns about  
 7 that. But I want to be respectful of whatever it is that  
 8 they don't want to talk about in court.

9 And so perhaps one solution is we could have an  
 10 in-camera conference to talk about whether a discussion  
 11 should be held in-camera or not because I don't know what  
 12 they're talking about.

13 MR. MALIONEK: That sounds like a fine solution.  
 14 We're not trying to hide evidence or information. We simply  
 15 have that evidentiary and legal argument to make, Your  
 16 Honor.

17 UNIDENTIFIED SPEAKER: Your Honor, pro se  
 18 creditor. Would like to be involved in that discussion.

19 THE COURT: I think the suggestion is that I have  
 20 a conference just to address the issue of whether it's  
 21 appropriate not to allow you to be in on that discussion.

22 I can in my head imagine things that you would  
 23 want to discuss and reveal to me that you would not want to  
 24 put on the public record and that also may not have any  
 25 bearing on this proceeding. I have no idea if that's what

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1 MR. UPTEGROVE: It is.

2 THE COURT: Okay.

3 MR. UPTEGROVE: I'll have to get off the line  
 4 though and --

5 THE COURT: Okay.

6 UNIDENTIFIED SPEAKER: Your Honor?

7 THE COURT: Yeah.

8 UNIDENTIFIED SPEAKER: Your Honor, (indiscernible)  
 9 New York (indiscernible). Is there a reason that can be  
 10 articulated as to why (indiscernible) cannot attend the  
 11 chambers conference?

12 THE COURT: Well, you know, I guess that's what  
 13 I'm going to be told, that apparently I have to be told in  
 14 private. That's one of the issues that I'll ask about.  
 15 Okay?

16 (Recess)

17 THE COURT: -- worry or misapprehension about what  
 18 happened in our private little conference right now, I am  
 19 going to say what happened.

20 There were two issues, neither of which were  
 21 evidentiary. One was that Binance is willing to free the  
 22 Debtors from their confidentiality limitations and is to  
 23 allow the Debtors to submit the sworn statements that  
 24 Binance has previously given to the Debtors and I think was  
 25 concerned as to whether that amounted to a tendering by

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1 this is about or whether there's some other reason why you  
 2 are concerned.

3 I think what I can -- the best I can do if I'm  
 4 being told that there is good reason and not an evidentiary  
 5 submission to have a private discussion just of the issue of  
 6 whether other information should be submitted in private,  
 7 that I can do that. But if in the course of that anybody  
 8 says anything that I think needs to be on the public record,  
 9 I'm putting it on the public record. And you ought to be on  
 10 notice of that.

11 MR. MALIONEK: Yes, Your Honor. We understand.  
 12 We do think there is good reason.

13 THE COURT: All right.

14 MR. UPTEGROVE: William Uptegrove for the SEC.  
 15 Understood, Your Honor.

16 THE COURT: Okay. So now how do we do this?  
 17 We've got the SEC by telephone. I guess the U.S. Trustee,  
 18 the Committee, Binance, the Debtor, come with me to my  
 19 chambers and we'll -- what's the number we can reach you at  
 20 at the SEC?

21 MR. UPTEGROVE: 404 -- well, actually -- yeah, we  
 22 can do that. 404-842-5765.

23 THE COURT: Five seven what?

24 MR. UPTEGROVE: Six-five.

25 THE COURT: Is that a direct to where you are?

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1 Binance of a witness, which I don't believe it does. I  
 2 don't think anybody here has subpoenaed a Binance witness or  
 3 called a Binance witness. And so if the Debtors want to  
 4 offer those certificates, I would appreciate it. That's the  
 5 first issue that was discussed.

6 The second issue was that the SEC wished to try to  
 7 answer questions that I had posed at the beginning of the  
 8 hearing as to what the SEC's position is on some of these  
 9 issues. But I gather that in the first instance they were  
 10 asked to find out if they could tell that to me separately  
 11 rather than in public. I responded that I am not  
 12 comfortable hearing that explanation in private. This is a  
 13 public court proceeding. I made very public what my  
 14 questions were. The SEC has made objections. Other people  
 15 have made objections. Anything that further explains the  
 16 basis for the SEC's position it seems to me is something  
 17 that everybody is entitled to hear. So if the SEC has an  
 18 explanation, I ask that that be put on the public record and  
 19 not done privately. Okay?

20 So don't think we're officially closed the  
 21 evidentiary record, but I do have quite a bit of authority  
 22 over the order of proceedings. And so if the SEC wishes to  
 23 make a clarifying statement as to its position, I welcome  
 24 them to do so.

25 MR. UPTEGROVE: Thank you, Your Honor. William

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Uptegrove for the United States Securities and Exchange Commission. Again, Your Honor, just to be clear, when Your Honor raised the issue yesterday, we went back internally within the SEC and worked as diligently as possible all throughout the SEC to try our best to answer your questions. And I have been authorized to provide the following additional information. I don't think it satisfies all of your questions, but under the circumstances, this is what I have authority to provide.

So, Your Honor, this is a complicated situation, in part because seeking relief against a defunct entity is often not productive and given the nature of our enforcement investigation, which are non-public. Additionally opinions of the staff do not reflect the views of the Commission, which has not taken a position with respect to Voyager or Binance. With that being said, the staff believes based solely on the facts and circumstances currently known to the staff that the offering and sale of BGX tokens have the attributes of a securities transaction -- securities transactions. Staff also believes that Binance.US is operating an unregistered security exchange in the United States. The Commission has not made any determination on either of these issues. The staff beliefs do not represent the position of the Commission. And that's all I wanted to provide, Your Honor. Thank you.

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suppose, all the interested parties?

THE COURT: Well, I'll ask them to be put on the public record. But I think they're being offered by way of explaining the Debtor's due diligence, in which case they're not hearsay, they're evidence of things that the Debtors looked at and relied upon.

MR. SLADE: Your Honor, Mike Slade for the Debtors. We would offer the Binance officer certificate that Mr. Tichenor testified to extensively as Debtor's Exhibit 26. And if you admit it, we will put it on the public docket tonight. Or maybe tomorrow.

THE COURT: Do you have them here, by the way?

MR. SLADE: I do have -- yes. We have one copy with a one underline on it.

THE COURT: Well, just put it on the docket and I'll download it from there.

MR. SLADE: Yes, sir. We will.

THE COURT: So to the extent there's a hearsay objection, I overrule it.

MR. SLADE: Thank you, Your Honor. The Debtors do not have any more witnesses.

THE COURT: What about the objections we have as to the selection of the plan administrator. Is anybody going to address that?

MR. SLADE: Yes, Your Honor. The Committee is

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MR. MALIONEK: Your Honor, Robert Malione. My understanding -- correct me if I'm wrong -- was that there would be no information or evidence that would be offered. That sounded to me to be different than what my understanding was anyway. And so we would move to strike.

THE COURT: It's not evidence. Right? It's a statement of position. Yesterday, the SEC said that it wasn't taking a position one way or the other. Today, it's saying that the staff is informing me of what it believes, but that the Commission as a whole is still taking no position. That just essentially tells me what a contention is. Okay?

So at least I know that the SEC isn't just saying maybe, that it's saying it thinks that there are issues. But I still don't have evidence and I still don't have very much clarity as to exactly why they think there are issues or how they would affect this transaction. But I guess I appreciate the limited clarification you have been able to provide. Okay?

Is there any other evidence that anybody wishes to offer? To turn back to the evidentiary record.

MS. RYAN: Your Honor, this is Ms. Ryan from Texas. The statements or affidavits being submitted by Binance, we would object to those as hearsay. And once they are submitted, will they be available to everyone, I

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going to put on a witness, right, or whenever Your Honor would like, to testify about that.

THE COURT: Let's go there.

MR. CALANDRA: Your Honor, John Calandra from McDermott Will & Emery on behalf of the Committee. We would like to call Paul Hage, who would be plan administrator, Your Honor.

THE COURT: Okay.

Mr. Hage, do you promise and swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. HAGE: I do.

THE COURT: State your full name for the record, please.

MR. HAGE: Paul Robert Hage.

THE COURT: Okay. Please proceed, Counsel.

MR. CALANDRA: Thank you.

DIRECT EXAMINATION OF PAUL HAGE

BY MR. CALANDRA:

Q Mr. Hage, what is your current occupation and employment?

A I am a partner and co-chair of the bankruptcy and restructuring group at Taft, Stettinius & Hollister. And I am based in Detroit, Michigan.

Q And how large is your firm, Taft?

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1 A Taft has roughly 850 attorneys, located primarily in  
2 the Midwest.  
3 Q Where are you admitted, sir?  
4 A I am admitted in the state of Michigan, the Eastern and  
5 Western District of Michigan District and Bankruptcy Courts,  
6 the Sixth Circuit Court of Appeals, and the United States  
7 Supreme Court.  
8 Q Okay. You are aware that the Committee has selected you  
9 to serve as plan administrator of the winddown entity  
10 pending the Court's approval?  
11 A I am.  
12 Q And you are willing to do so?  
13 A I am.  
14 Q Can you briefly describe for us your background? Let's  
15 just quickly start with your education and then we'll move  
16 on.  
17 A Sure. I graduated with a bachelor's degree from  
18 Michigan State University. I have a law degree from Loyola  
19 University Chicago. And I have a master's of laws, or an  
20 LLM degree, in bankruptcy law from St. John's University  
21 School of Law here in New York.  
22 Additionally, during law school, I interned with the  
23 Honorable George Steeh, a U.S. district court judge in the  
24 Eastern District of Michigan, and with the Honorable  
25 Elizabeth Stong, United States Bankruptcy Court Judge from

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1 Q Okay.  
2 A I see I'm wearing the exact same tie in this picture  
3 that I am wearing today.  
4 Q That's good. You're frugal. What is the document,  
5 sir, that is 1109-2?  
6 A The document is my resume.  
7 Q Okay. Did you prepare this document?  
8 A I did.  
9 Q Is it a true and correct copy of your resume, sir?  
10 A It is.  
11 MR. CALANDRA: Your Honor, we would like to move  
12 the admission of this document into evidence as 1109-2.  
13 THE COURT: Any objections? All right, the  
14 Exhibit is admitted.  
15 (Exhibit 1109-2 entered into evidence)  
16 BY MR. CALANDRA:  
17 Q Let's just take a quick look. We're not going to spend  
18 too much time on this, but I have a few questions about your  
19 resume that I'd like to elicit testimony on. Let's start  
20 with -- I see you say that you've been twice selected by the  
21 Sixth Circuit Court of Appeals for a finalist for bankruptcy  
22 judgeship. Could you explain that a little bit?  
23 A Sure. Those people who know me know that my career  
24 goal is to be a federal bankruptcy judge.  
25 THE COURT: Has this hearing changed your mind?

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1 the Eastern District of New York.  
2 Q And what did you do after graduation and you got your  
3 LLM, what was your employment?  
4 A So upon graduating from St. John's, I moved back to  
5 Michigan, which is where I grew up. And I have a bankruptcy  
6 attorney. It's substantially all that I do is practice  
7 bankruptcy law for the last 16 or 17 years. My practice  
8 primarily consists of representing unsecured creditors and  
9 creditors' committees and post-confirmation fiduciaries, be  
10 it a liquidating trustee type position or Chapter 7  
11 bankruptcy trustees.  
12 Q And now you are the co-head of the bankruptcy practice  
13 at your firm?  
14 A I am co-chair of the bankruptcy practice at Taft, yes.  
15 MR. CALANDRA: Your Honor, may I approach the  
16 witness? I would like to hand him his resume.  
17 THE COURT: Yes. You don't need permission to  
18 approach the witness.  
19 MR. CALANDRA: Would Your Honor like a copy?  
20 THE COURT: Yes, please. Thank you.  
21 BY MR. CALANDRA:  
22 Q Okay. I've showed you what is on the docket for the  
23 record as Docket Number 1109-2. Do you have that in front  
24 of you, sir?  
25 A I do.

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1 BY MR. CALANDRA:  
2 A It has not. This is what I do. And so I have applied  
3 on a few occasions from fairly early on my career to be a  
4 judge. It's a pretty rigorous application process. There  
5 is an expansive application that asks just about every type  
6 of question about somebody's professional experience and  
7 also their character. And I have applied and gone through  
8 that process a couple of times in the Sixth Circuit. It's  
9 done differently in each judicial circuit.  
10 But in the Sixth Circuit, the Sixth Circuit Court of  
11 Appeals appoints a merit selection panel consisting of  
12 members of the local bar to conduct interviews and an  
13 initial background check of each candidate. And then  
14 there's a fairly fulsome interview process that is  
15 conducted. From that process, the merit selection panel  
16 recommends to the Court of Appeals three to five finalists  
17 for the position. Usually it's three to five. I'm not sure  
18 it's a hard and fast rule, but that's normally what they do.  
19 And I have twice been selected as a finalist, in 2018 and  
20 more recently in 2021.  
21 As a finalist then, there is additional sort of  
22 interview and background process and the interview with  
23 judges on the Sixth Circuit Court of Appeals. I've done  
24 that twice.  
25 Q Okay. Thank you for the explanation. You also said

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that you were co-director of the Conrad Duberstein National Bankruptcy Moot Court Competition. Is that why you're in town this week?

A That is actually why I'm in town this week, is that I run the -- it's the bankruptcy court competition. It's run in conjunction with the American Bankruptcy Institute in St. John's University School of Law. I help to run it. I serve as a judge at the competition and I write the problem. And I've done that with a judge in Grand Rapids for the last six years.

Q That's great. Let's just focus a little bit on your professional associations and memberships, starting with the American Bankruptcy Institute. For those who are on the phone who are not aware of that, can you explain what that is?

A Sure. The American Bankruptcy Institute I think is the largest organization of bankruptcy and insolvency professionals and judges in the country. I think it's a highly -- it's a well-recognized organization. I've been very involved with it since even before starting practice, writing articles, speaking at conferences, attending conferences.

In 2019, I was selected to be a member of the ABI's board of directors, and I have served in that capacity for the last three or four years. In 2022, I was selected from

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Q Largely on what subjects?

A I do a lot of writing.

Q On what subjects?

A Entirely on bankruptcy law.

Q Okay. And then if I'm correct, your speaking engagements go on from pages 8, pages 9, and pages 10, largely on bankruptcy subjects?

A Exclusively on bankruptcy subjects, yes.

Q Okay.

A Or other insolvency-type issues.

Q I know you said you're here this week because of the Duberstein Bankruptcy Moot Court. But were you in court yesterday?

A I was.

Q Okay.

A And to clarify, given the importance of these hearings, I likely would have been here anyway. Perhaps telephonically, but certainly I recognize the importance of these hearings.

Q Have you been involved at all in any connection in the Voyager bankruptcy since it started?

A I have.

Q Okay.

A I represent Jason Raznick.

Q And who is that?

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the Board to be the ABI secretary and a member of its executive committee. So it's an organization that I'm very active with.

Q Okay. And I see your professional associations span a couple of pages, and there are maybe about 20. And I don't want to spend the time to go through that, but I was -- it did catch my attention the American College of Bankruptcy fellow. Could you explain that?

A Yeah. The American College of Bankruptcy is an honorary organization that recognizes people who have done a lot and are held in high character, high regard, have done a lot in the bankruptcy community. A high standard of practice and focused on sort of the right types of things. And I was honored to be selected as a fellow last year.

Q On the top of Page 3, it lists honors and awards. And you have a number of them. They all relate to bankruptcy. Am I right?

A That's correct. Again, 99 percent of my practice really is bankruptcy law.

Q And then under books, it seems that you're an author or co-author of six books relating to bankruptcy.

A That's correct.

Q And publications goes on from Page 3 to Page 4, Page 5, Page 6, Page 7, to the top of Page 8. Am I correct?

A That's correct.

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A Jason Raznick is the chair of the Creditors' Committee.

Q Okay. And what have you been doing in terms of your representation of him related to Voyager?

A In my capacity representing him, I have been actively involved with the Creditors' Committee. The Committee communicates regularly as throughout this case, meets weekly, frequently more often than weekly to discuss the very difficult issues in this case. And I have participated in not all, but probably the majority of those calls over the last seven months. I have reviewed the pleadings in the case. So I am very familiar with the case and have participated in that capacity.

Q For those who are on the phone who might be wondering, when did you first meet Mr. Raznick, when would that be?

A I was first introduced to Mr. Raznick in July of 2022, shortly after the commencement of these bankruptcy cases.

Q So prior to the commencement of these bankruptcy cases, you did not know him?

A I did not.

Q Have you actually ever met him in person?

A I have not actually met Mr. Raznick in person. We've talked regularly of course on the phone and on Zoom. In 2022, that's a lot of how we communicate.

Q Okay. And how did you come to meet Mr. Raznick and work with him?

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1 A Right. Well, Mr. Raznick was one of the largest retail  
2 customers in this case. His brother is a partner at my law  
3 firm. And so when the bankruptcy case was commenced and he  
4 needed bankruptcy counsel, he was referred to me.

5 Q As the co-head of bankruptcy practice for your firm?

6 A That's correct.

7 Q What about McDermott Will & Emery? Have we ever worked  
8 together, McDermott Will & Emery and you?

9 A I have not worked with McDermott Will & Emery prior to  
10 this case.

11 Q Okay. And when was the first time you ever met Mr.  
12 Azman?

13 A In person, yesterday. We have been on Zoom many, many  
14 times.

15 Q What about me? When was the first time we met?

16 A Same.

17 Q Okay. And you said you've attended the committee  
18 meetings. Is that right?

19 A Yes. And attended many of the hearings in this case as  
20 well.

21 Q Approximately how many committee meetings have you  
22 attended?

23 A I would estimate maybe 30. As I said, there's weekly  
24 committee calls that have been held to talk about the very  
25 difficult issues in this case. And at different points,

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1 myself from that under that provision of the plan  
2 administrator agreement and one of the three members of the  
3 oversight committee would serve as the plan administrator in  
4 that capacity. To be clear, I'm not aware of any conflicts  
5 that might exist, but that's a protective measure that is a  
6 common thing that I see in fiduciary agreements like this,  
7 liquidating trust agreements, to address issues. Because  
8 you just never know what's going to come up down the road.

9 Q Understood. And my question was only prophylactic. Is  
10 Mr. Raznick on the Oversight Committee?

11 A He is not.

12 Q Now, did you attend the meeting -- I'm going to ask a  
13 series of questions because I know there's an objection that  
14 related to Mr. Raznick. And I think the allegation was  
15 that, quote, "Mr. Ehrlich may have influenced Mr. Raznick's  
16 decisions to not pursue third party causes of action more  
17 decisively, and the UCC chair, that he may have influenced  
18 other UCC members to do the same."

19 Now, were you at the committee meeting on October 16th,  
20 2022 where the vote was taken to support the settlement, the  
21 D&O settlement?

22 A I was.

23 Q Okay. Did Mr. Raznick speak out in favor of that  
24 settlement at that meeting or against it?

25 A He aggressively opposed at that time.

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1 they may be more frequently than weekly. So I would say 30  
2 or 40 meetings maybe.

3 Q Do you feel you are familiar with the Committee's work  
4 in the matters in this case?

5 A Very.

6 Q Okay. Do you think that will help you should you be  
7 appointed as plan administrator?

8 A I do. There's a lot to get up to speed with here, and  
9 I'm up to speed with a lot of it already.

10 Q Is there in place any recusal process should in the  
11 future you have any conflict of any kind? What happens  
12 then? What is the process under the plan as you understand  
13 it?

14 A There is. At my request, there is a provision in the  
15 plan administrator agreement that is in one of the plan  
16 supplements that contemplates that in the event there is any  
17 potential conflict of interest that might arise, that I  
18 would recuse myself from that matter. And of course as an  
19 attorney and as a fiduciary, I take issues of conflicts of  
20 interest and ethical responsibilities very, very seriously.

21 And so in the event that I or anybody else involved  
22 with the plan -- because there's a Plan Administrator  
23 Oversight Committee. If I or any of the members of the Plan  
24 Administrator Oversight Committee believed that there was a  
25 potential conflict of interest there, then I would recuse

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1 Q Did he vote for the settlement?

2 A He was the last committee member to vote, and he  
3 abstained.

4 Q Okay. So to the extent there's an allegation that he  
5 was influencing folks on the Committee to support the  
6 settlement, what have you to say about that?

7 A That is absolutely not true to my knowledge.

8 Q Okay. One last question. What -- can you describe to  
9 the Court, what is your experience in dealing with post-  
10 confirmation fiduciaries?

11 A Substantial. It's a substantial part of my practice.  
12 I have on many occasions represented, as I noted earlier,  
13 post-confirmation in Chapter 11 cases, liquidating trustee-  
14 type fiduciaries. I have also on multiple occasions  
15 represented Chapter 7 trustees. And frequently the role in  
16 those cases has been very similar to the role here. It is  
17 investigating and pursuing causes of action for the benefit  
18 usually of unsecured creditors. Causes of action like the  
19 causes of action that can and should be investigated here,  
20 claims involving breaches of fiduciary duties, claims  
21 against insurance companies, fraudulent transfer-type  
22 claims, the types of things that you determined that was  
23 used earlier today, the blocking and talking of sort of  
24 bankruptcy post-confirmation litigation. I am very, very  
25 familiar with that law. I am very, very familiar with the

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different wrinkles, the legal issues that come up with those cases, the defenses that are asserted. I've negotiated with insurance companies before. It's what I do.

Q Okay.

MR. CALANDRA: Your Honor, I have no further questions.

THE COURT: All right. Any cross-examination of Mr. Hage? First start with anybody in the room who has a question. I see we have one taker.

MR. POSNER: Your Honor, for the record, David Posner from Patrick Townsend, Kilpatrick, Townsend & Stockton. I am counsel for the Ad Hoc Group of Equity Interest Holders of Voyager Digital Limited.

So for the record, I am not objecting the appointment of Mr. Hage as the plan administrator. We did have objections to the plan, which we have resolved, Your Honor. But subsequent to the resolution of them, when the second amended plan was filed and when the third amended plan was filed, there was some language in that plan which concerned us, which I've been here for the last two days hoping to address with the Court. That's more in the nature of argument.

Now that Mr. Hage is on the stand, I have some questions for him that are relevant to that language in the plan that concerns us. So if I might, I would like to ask

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both filed within the last two or three days.

Q I have reviewed various versions of the plan, including I believe the most recent version that's on file. It's hard, as it has been amended. But yes, I am generally familiar with the concepts with respect to the plan.

Q There's sections in the plan that deal with the appointment of the plan administrator, correct?

A There are.

Q And you probably don't have the plan in front of you. I unfortunately don't have a third amended plan with me, but I do have the second amended plan. And the provisions with respect to the -- I need my glasses to read it. Docket Entry 1117 is the Second Amended Plan. And the provision dealing with the appointment of a plan administrator start at Page 36. Are you familiar with those provisions of the plan generally?

MR. CALANDRA: Your Honor, may I object? If you're going to ask him questions about something that changed, are you representing there are no changes to this?

MR. POSNER: I haven't compared the Third Amended and the Second Amended. I don't think these provisions changed.

MR. CALANDRA: Why don't you give him the Third Amended so that we're asking him about the plan that's before the Court?

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him a couple of questions.

THE COURT: Go ahead.

MR. POSNER: Okay. Thank you.

CROSS EXAMINATION OF PAUL HAGE

BY MR. POSNER:

Q Mr. Hage, you testified just before that you were actively involved in the Committee and all the meetings and the deliberations, correct?

A I wouldn't say all of the deliberations, but substantially all, yes.

Q You actively participated in committee meetings, correct?

A I did.

Q And so you are generally familiar with the issues in the Debtor's Chapter 11 cases from the perspective of the Committee?

A I am.

Q Are you familiar with --

A And from the perspective of other parties based on the pleadings and the arguments made in the case. I am very familiar with all of the issues.

Q Thank you.

A Well, many of the issues.

Q Have you reviewed the plan? In particular the second-amended plan or the third amended plan? I know they were

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MR. POSNER: I don't have the Third Amended with me.

THE COURT: Why don't we first cut out and excise all the beginning of the question and just ask him if he's familiar with the provisions of the plan regarding the selection of a plan administrator.

Are you?

THE WITNESS: I am.

THE COURT: Okay.

MR. CALANDRA: Your Honor, I don't mind a little latitude, but this is well outside the scope of my direct.

THE COURT: It's okay. Unless you want me to recall the witness again later, we will do it all now.

BY MR. POSNER:

Q So you're generally familiar with the provisions with respect to the appointment of a plan administrator?

A Generally, yes.

Q And there's a laundry list in the plan that's entitled responsibilities of the plan administrator, correct?

A That's correct.

Q And there's one winddown debtor for all of the entities, correct?

A I believe that is correct, yes.

Q And so you would be the plan administrator for all of the debtor entities, correct?

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1 A I believe that is correct. That is my understanding.

2 Q And some of the responsibilities of a plan

3 administrator, or one of the responsibilities of a plan

4 administrator, it's in 5C, is appointing an independent

5 director at each debtor to act as a fiduciary for such

6 debtor entity in connection with the resolution of

7 intercompany claims.

8 A Well, let me just say it would be helpful to have that

9 document to look at.

10 Q Okay.

11 A I can't confirm what that says. But I will say in the

12 interest of trying to shortcut this, that I am familiar that

13 that is a provision in the plan.

14 Q Okay.

15 A I don't have the specific language or any -- you know,

16 I know that's one of the...

17 Q But you're familiar with the provision that empowers

18 the plan administrator to --

19 A I am generally familiar with the powers of the plan

20 administrator, yes.

21 Q To appoint independent -- an independent director at

22 each debtor entity?

23 A Correct, yes.

24 Q Are you familiar that there is a dispute involving

25 intercompany claims in the debtor's bankruptcy cases?

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1 in the case that you've prosecuted on behalf of your

2 clients.

3 Q Are you familiar with the Debtor's schedules and

4 statements?

5 A I read them months ago.

6 Q Okay. Are you aware that when the schedules and

7 statements were initially filed, they listed the

8 intercompany claims as not disputed or contention they're

9 unliquidated?

10 MR. SLADE: Your Honor, I would object. This is

11 not relevant.

12 THE COURT: Are we litigating the merits now?

13 MR. POSNER: No, I'm just...

14 MR. SLADE: I think we are, Your Honor.

15 THE COURT: What's the point of that?

16 MR. POSNER: I was just asking if he was familiar

17 with it.

18 THE COURT: Why?

19 MR. POSNER: Because, Your Honor, two nights ago

20 they amended the schedules to change that. And he is going

21 to be the plan administrator, and presumably he is going to

22 end up dealing with -- potentially dealing with those

23 issues.

24 THE COURT: So what?

25 MR. POSNER: Well, because he is going to be the

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1 A I am.

2 Q And what's your knowledge of that dispute?

3 A That a dispute exists on that and that my understanding

4 is at a very high level that the settlement that has been

5 reached, subject to the revision I think that you just

6 mentioned at the beginning of your questioning, is that

7 those issues will be addressed going forward.

8 Q Okay. So it's your understanding that the intercompany

9 claim dispute hasn't been resolved, that it's going to be

10 resolved at some later date.

11 A Well, let me just say that -- yeah, that is my

12 understanding. I am not yet the plan administrator. I have

13 not been involved in negotiations about those issues. But

14 generally speaking, I have -- from what I have been able to

15 glean from reading from the documents, that is my

16 understanding, yes.

17 Q You are aware that there are currently independent

18 directors at each one of the Debtor entities?

19 A Certainly.

20 Q Are you aware that there has been ongoing discussions

21 and negotiations among the independent directors at the

22 debtor entities regarding the intercompany claims?

23 A I don't have any specific knowledge about that. It

24 would surprise me if there weren't ongoing discussions.

25 Because, as I noted earlier, I know this has been an issue

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1 plan administrator for all of the entities. What I wanted

2 to ask him was should the intercompany disputes continue, is

3 he going to handle them or is he going to recuse himself and

4 allow independent directors that he is going to appoint

5 handle them?

6 THE COURT: Well, you can ask him that. What does

7 that have to do with the schedules?

8 MR. POSNER: It doesn't. I was just trying to lay

9 a foundation to see if he was familiar with the topic, Your

10 Honor.

11 BY MR. POSNER:

12 Q So, Mr. Hage, you are going to be the plan

13 administrator for all the Debtor entities. The intercompany

14 claims have to be resolved. You're going to appoint

15 independent directors. Is it going to be the independent

16 directors who are going to handle that since as the plan

17 administrator for all of the entities, you couldn't

18 represent all of the entities in a dispute over intercompany

19 claims, correct?

20 A So what I would say to that is that that's an issue

21 that I have not investigated yet, as again, I am not yet the

22 plan administrator. And so it would be an issue that I

23 would look at with professionals. As all fiduciaries do,

24 they rely on the advice of professionals. It's something we

25 would look at and make a determination at that time. But I

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am not prepared to make any statements here today about how any future litigation would be dealt with, nor do I think that would be appropriate.

Q Okay. But you would agree as the plan administrator for all the entities that there was a dispute amongst the entities, you couldn't be on both sides of the dispute.

MR. SLADE: Your Honor, I object. That is not an appropriate question for this proceeding.

MR. AZMAN: Your Honor, the Committee agrees. This is highly inappropriate. He's trying to box the witness in a future role where he hasn't even been approved to be a plan administrator. I don't understand what the line of questioning is designed to get at given what the purpose of this hearing is.

THE COURT: Well, I understand. But it seems to me that it's focused more on an objection to a plan provision rather than to the qualifications of this individual to serve as the plan administrator. And it's not clear to me that we even have a plan objection or that the witness's opinion on that subject means anything. It's my opinion about whether it's appropriate or not. So do you really need to pursue that?

MR. POSNER: I don't, Your Honor.

THE COURT: Okay.

MR. POSNER: I don't have any more questions for

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and now you are nominated to be the administrator for the winddown entity. How does none of all of that constitute some kind of conflict of interest?

A As I said earlier, I take attorney ethical rules regarding conflicts of interest very seriously. I don't believe there is any conflict of interest here. I was not -- I pitched for this position to serve as the plan administrator. The Creditors' Committee, which consists of seven retail customers, each of whom have their own very strong opinions about this case, the history of the Debtors. And not all on the same page. And I pitched amongst multiple candidates for this role and was selected unanimously to serve. I have at my own insistence asked that in the plan administrator agreement which would govern my conduct going forward, the provision that I mentioned earlier that would require me to recuse myself if I or any member of the Plan Administrator Oversight Committee believed that there was any potential conflict of interest, that's what we would do. Of course all of my conduct in that capacity is subject to the supervision of the bankruptcy judge.

And in terms of Mr. Raznick and McDermott Will & Emery, as noted in the questioning that was asked to me, I don't have any -- I am not beholden to them. I don't have a long-term relationship with them. My relationship has been

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the witness then, Your Honor.

THE COURT: Thank you. Is there anybody else here who wishes to cross-examine this witness?

How about anybody on the telephone? Does anybody wish to cross-examine Mr. Hage?

Yes, Your Honor. I am a pro se creditor. My name is (indiscernible).

THE COURT: Okay. Please proceed.

BY UNIDENTIFIED SPEAKER:

Q Hi, Mr. Hage. I just want to make sure I heard you correctly. Did you say that Jason Raznick's brother works at your law firm?

A I did. That is correct.

Q Okay. And so I just want to confirm, is his name Brian Raznick?

A Yes.

Q Okay. How is it -- because one of the things that I know within my -- you know, amongst us creditors, because we all are part of a community and we all talk pretty much on a daily basis. And I know that one of the biggest themes or concerns in this case has been this person knows this person, this person does this person a favor, and everyone is just, you know, kind of scratching each other's backs.

You are the attorney for Jason Raznick. His brother works at your law firm. You've been dealing with McDermott,

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exclusively in the context of this case.

Q Okay. So I just want to make sure I heard you correctly. Are you saying that all seven members of the UCC voted to have you be the administrator of the winddown entity?

A Well, to be clear, because I was one of multiple people who had applied for the job, so to speak, I was not present for the deliberations. That is my understanding though, is that that's how it turned out. That was the way the vote came out.

Q Okay. Because I thought I heard you say unanimously, you were voted unanimously. So I guess I took that to mean that every member, all seven members voted for you. Is there a way to find out how many members voted to have you and how many members did not?

A I'm not sure I can answer that question. Again, I wasn't present for the vote. That is my understanding of how the vote turned out.

UNIDENTIFIED SPEAKER: Your Honor, would someone at McDermott be able to answer that question since they represent the UCC?

MR. AZMAN: We're happy to look back at the minutes to confirm. I don't remember off the top of my head if it was unanimous. It was certainly the majority. That was the vote.

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THE WITNESS: Well, that's what I was going to add.

MR. AZMAN: I'm also not testifying to (indiscernible).

BY MR. POSNER:

A If it was -- it may -- I believe it was a unanimous vote to my understanding. But in any event, it was a majority of the vote because I was the person elected and identified in the plan.

Q Yeah, I understand that. I guess I'm just trying to -- like, it's just if it's unanimous meaning all seven, then that makes me think, wow, like, they all don't see any conflict of interest in having you? But if say, you know, two or three, because four would be the majority, you know, objected to it, then at least I see that there are people there -- you know, the UCC members who represent us creditors, that they are along the same lines of thinking that I am, that how does this not seem like they have a conflict? It's like Jason Raznick's brother is a partner at your law firm. So he needed a lawyer. He goes to his brother, who works at your law firm. And then you are the one representing Jason. Jason is the chair of the UCC. The UCC is represented by McDermott. And there was already a lot of talk about how Jason knew Steve Ehrlich and knew Sam Bankman-Fried and, you know, we're all friends and we're all

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not Jason Raznick. As I noted, I do not have a long-term relationship with Jason Raznick.

The theories alleged -- raised in some of the objections about the relationship between Mr. Raznick and Mr. Ehrlich, as I noted earlier, are not accurate. He argued against the proposed releases initially that are now incorporated into the plan. And while it is true that there was a professional and maybe a friendly even relationship that existed between Mr. Raznick and Mr. Ehrlich prior to the bk filing, Mr. Raznick was one of the largest retail customers in this case. That's why he was appointed to the Creditors' Committee by the Office of the United States Trustee. And any cordial relationship that existed previously with Mr. Ehrlich certainly ended at the point where Mr. Raznick's significant funds were locked up, just like all the retail customers. His goal and my goal throughout this case has been singular; to get creditors, retail customers, as much of their money back as possible as soon as possible.

UNIDENTIFIED SPEAKER: So the person, anyone at McDermott, would it be possible for you guys, whenever you get a chance, to send out a tweet from the official Voyager UCC account letting us know -- obviously you do not have to divulge who it is, but -- and know you guys have given numbers before -- but letting us know how many members voted

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buddies and we're all just, you know, handing each other money. And we're all just keeping it in this tight-knit circle. You know, I just don't see how that -- people are benefiting from people knowing each other. And that's what I mean. It's like one person scratches the other person's back and we're all in cahoots, which a lot of us creditors feel like we were never properly represented and that the money expenditures and the decisions that have been made throughout this entire case have been completely against us because it's part of the boys club of let's scratch each other's backs. Do you see where I'm getting?

THE COURT: Yeah. It's not a question.

MR. SLADE: I object. That was argument. The facts are in evidence. And I object. That was not a question.

MR. CALANDRA: I join, Your Honor.

THE COURT: To the extent that there's a question in there, I think it is for you to explain, Mr. Hage. Do you think that your partner's connection with -- as being a brother of Mr. Raznick and the fact that that led to your appointment gives rise to a conflict in the performance of your duties as plan administrator? And if you don't think it does, please explain why it does not.

THE WITNESS: I do not think it does. First of all, the plan administrator is Paul Hage, not my law firm,

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yes and how many members voted no of Mr. Hage.

MR. AZMAN: This is Darren Azman from McDermott for the Committee. I'll just tell you right now. I have the minutes from the meeting. And again, this is not evidence. I wouldn't be able to introduce it through this witness because he was not there.

There are -- just a moment. There are four individual committee members who voted to appoint Mr. Hage as the plan administrator. And at the time we thought it would be a liquidating trustee, but same role. There are three individuals -- we had discussed -- just a moment, Your Honor.

I just wanted to make sure we weren't waiving any attorney-client privilege.

There are three committee members who voted to appoint two co-trustees together. Mr. Hage would have been one. And so I don't know whether you would call that unanimous or not, but that's what the vote was. Again, four that voted to appoint Mr. Hage only, three who voted to appoint two co-trustees, one of whom would be Mr. Hage.

UNIDENTIFIED SPEAKER: Okay. I just want to make sure I understand this correctly. So four people just voted for Mr. Hage and then three people voted for Mr. Hage plus one other person to be co-trustees with Mr. Hage?

MR. AZMAN: Yes.

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UNIDENTIFIED SPEAKER: Okay. And since it's four against three -- so I can see why it's unanimous in the sense that all seven said Mr. Hage. But three of the seven at least wanted a secondary person almost an oversight, someone to check over Mr. Hage to make sure that he's doing his job properly. So there's a tiebreaker there because it's four against three. Would you be allowed to say if one of the people that's on the four side was Jason Raznick, giving an advantage to just having Mr. Hage by himself versus having the co-trustee, of having that oversight over Mr. Hage?

THE COURT: I don't think that's -- first, I don't think it's a question for the witness. But also, I didn't hear the Committee counsel say that three people wanted an additional person as an oversight of Mr. Hage. They just said that they thought that there should be two trustees instead of one.

UNIDENTIFIED SPEAKER: You're right, Your Honor. He didn't use the word oversight. I am interpreting it that way, that that might have been the intention --

MR. AZMAN: Let me further clarify. I'm just reading the minutes more closely. Just to be clear, of the three who said Mr. Hage plus one -- and I did not say that they would be in an oversight role. There's two co-trustees. Of those three, one voted for Mr. Hage to appoint

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that was part of the consideration that was given by the Committee.

UNIDENTIFIED SPEAKER: And to my question, would we be allowed to know which way Jason Raznick voted?

MR. AZMAN: Is that a question for the witness or --

THE COURT: I think it's a question to you as counsel, not to the witness. Because you're the only one that has the information.

MR. AZMAN: Sure. Mr. Raznick voted for Mr. Hage only.

UNIDENTIFIED SPEAKER: So Jason Raznick voted so that Mr. Hage got all of the business versus it being split with somebody else is kind of how I see that. Okay.

Other than asking questions, it's not like I really have any power in this case. But I do for the record want to state that I object to Mr. Hage. Nothing against him personally. I'm sure he does his job well. But considering everything that has surrounded this -- that has been -- this case being surrounded by so much non-transparency and just, like I already said, the whole let's scratch each other's backs and let's do each other favors. So for the record, I object to Mr. Hage being a plan administrator and I would prefer that someone else be chosen.

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Mr. Hage with potentially one more trustee depending on the total price. I don't -- yeah. That's just what the minutes reflect. That's all.

THE WITNESS: Well, and let me add to that. I know that that was part of the consideration in that it is no secret that the professional fees have been significant in this case. It's a complex case and it's been professional-intensive. And I do believe that a factor that the Creditors' Committee considered was the expense of having multiple trustees. It is not uncommon to have multiple trustees. It's also not uncommon to have a single trustee. It is not uncommon -- in fact, I would say in my experience representing committees and trusts, it is not at all uncommon for the Committee to negotiate as part of the Chapter 11 case that there will be a post-confirmation trustee. And it is not uncommon for the selection of that trustee to be done by the creditors' committee, and it is not uncommon even for members of the creditors' committee to serve in that capacity. And so that is all part of the deliberation that went into this. One of my selling points, because I'm very mindful of the professional fees and that every dollar that is spent is a dollar that's not available for customers, is my rate, and that I am located in Michigan and not in New York. And therefore, my rate is substantially less than New York rates. And I'm sure that

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THE COURT: Okay, I understand that. Do you have any more questions for Mr. Hage?

UNIDENTIFIED SPEAKER: No. Thank you so much, Your Honor.

THE COURT: Okay. Anybody else who wishes to question Mr. Hage?

MR. NEWSOM: Your Honor, this is Dan Newsom, pro se creditor.

THE COURT: Okay. Please proceed, Mr. Newsom.

BY MR. NEWSOM:

Q Good evening, Mr. Hage. In your representation of Mr. Raznick, did you advise him on how to act in the best interest of creditors (indiscernible)?

MR. CALANDRA: Your Honor, I am going to object that we're invading the client privilege here. I don't mind him just answering yes or no, but any further than that, I would object.

THE COURT: It seems to me you can answer yes or no to that question without breaching the privilege.

BY MR. NEWSOM:

A Yes.

Q Did you unofficially advise other members of the UCC on (indiscernible) during the meetings?

MR. CALANDRA: Objection. Don't even understand what unofficially means.

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1 THE COURT: I don't, either. Objection sustained.

2 BY MR. NEWSOM:

3 Q Do you agree that one of the roles of the UCC is to

4 monitor fees (indiscernible) bankruptcy (indiscernible)?

5 A I'm sorry. I am having a hard time hearing the

6 question.

7 THE COURT: Do you agree that one of the roles of

8 the UCC is to monitor fees was the question.

9 BY MR. NEWSOM:

10 A I do.

11 Q I believe in one of the objections, Mr. Raznick stated

12 he has no control over fees. Did you advise him not to

13 raise objections or concerns to the fees?

14 MR. CALANDRA: Now we're getting into the

15 privilege, Your Honor. I object.

16 THE COURT: Did you have any non-privileged

17 communications with Mr. Raznick on that subject?

18 THE WITNESS: No.

19 THE COURT: Okay.

20 THE WITNESS: Not that I recall.

21 THE COURT: All right. The privilege belongs to

22 Mr. Raznick. I can't let the witness violate his

23 professional obligations and testify about matters that are

24 privileged.

25 MR. NEWSOM: Understood.

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1 MR. CALANDRA: I'm sorry, I didn't even hear the

2 question. Could you repeat the question, please?

3 THE COURT: It was something about whether there

4 was somebody who had withdrawals in the 90 days before the

5 petition.

6 MR. SLADE: (indiscernible) money on the platform

7 that was withdrawn within the 90 days.

8 BY MR. NEWSOM:

9 A I do not know.

10 Q Did Mr. Raznick have any holdings that were withdrawn

11 in that same timeframe?

12 A I believe he did, although I don't know the amounts or

13 dates. He wasn't treated any differently than any other

14 retail customer in that regard.

15 Q Has the Committee -- strike that. It's your

16 representation Mr. Raznick prevents you from advising the

17 Committee to contemplate pursuing insider clawbacks or other

18 preferential clawbacks of those with insider knowledge?

19 MR. CALANDRA: Objection. I'm not sure if he's --

20 was advising the Committee. He was advising Mr. Raznick.

21 THE COURT: What was the question?

22 BY MR. NEWSOM:

23 Q I'll rephrase. It's your representation that Mr.

24 Raznick prevents you from advising him to contemplate

25 pursuing insider clawbacks for those within insider

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1 BY MR. NEWSOM:

2 Q If I might ask, what was the final result of the vote

3 in the meeting regarding the settlement?

4 A I'm very sorry. I -- could you ask the question again?

5 THE COURT: What was the final vote on the motion

6 to approve the settlement? The one that you said Mr.

7 Raznick opposed.

8 BY MR. NEWSOM:

9 A I believe it was four in favor of not objecting to the

10 settlement, two who were voting in favor of objecting to the

11 settlement, and one, Mr. Raznick, who abstained.

12 Q To the best of your belief, that abstention did not

13 affect the outcome, correct?

14 MR. CALANDRA: I'm sorry, I didn't hear the

15 question.

16 THE COURT: The abstention then did not affect the

17 outcome of the vote. Is that right?

18 BY MR. NEWSOM:

19 A That is correct. Mr. Raznick voted last. And at that

20 point, the outcome of the vote had been determined.

21 Q Okay. And I'm not sure if this is attorney-client

22 privilege, but I'll ask and allow the Court to decide.

23 (indiscernible) corporation have any holdings on the

24 platform that were withdrawn within the 90 days prior to the

25 petition?

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1 knowledge?

2 THE COURT: Did your representation of Mr. Raznick

3 prevent you from advising the Committee? Is that what your

4 question was?

5 MR. NEWSOM: Mr. Raznick specifically.

6 THE COURT: Mr. Raznick specifically.

7 MR. AZMAN: Objection. Mr. Raznick wouldn't have

8 the ability to pursue. I think it's a misunderstanding of

9 the function of the Committee and Mr. Raznick's role, Your

10 Honor. I think the witness can answer because I think he

11 understands.

12 BY MR. NEWSOM:

13 A I'm sorry, I don't understand the question.

14 Q I believe the objection -- the question sort of was

15 answered. So at this point I will pass the stand.

16 THE COURT: Okay. Anybody else on the phone who

17 wishes to question Mr. Hage?

18 MR. HENDERSHOTT: Yes, Your Honor. Tracy

19 Hendershott, pro se creditor.

20 THE COURT: Okay.

21 MR. HENDERSHOTT: Thank you.

22 BY MR. HENDERSHOTT:

23 Q Good evening, Mr. Hage.

24 A Good evening.

25 Q Sorry?

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1 THE COURT: He said good evening.

2 BY MR. HENDERSHOTT:

3 Q You can hear me fine?

4 A I can.

5 Q Yes, thank you. Excellent. So just to clarify, you

6 know, the creditors have filed the objection. It's not

7 necessarily against you, Mr. Hage. We don't even know you.

8 Our objection is overall the conduct of this trial what we

9 feel is the inappropriate status of Chapter 11. We feel

10 that there's fraud and dishonesty (indiscernible) gross

11 mismanagement. We feel that when the Texas Attorney

12 Generals brought this up back in October as well as

13 creditors bringing it up in January, this case should have

14 been converted to a Chapter 7.

15 You've extensively highlighted your credentials and

16 expertise in bankruptcy. Textbooks, articles, education,

17 experience. I'm curious if you could share with us your

18 beliefs on the status of this case remaining in Chapter 11

19 when numerous cases and United States Code (indiscernible)

20 United States Trustee that the primary role of Chapter 11 is

21 to (indiscernible) comprehensive reorganization according to

22 the United States Code (indiscernible), one of the paramount

23 objectives of a Chapter 11 is reorganization, iso to

24 rehabilitate, none of that which is happening in this trial.

25 So I'm curious, as the plan administrator going

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1 done. Again, with an eye towards maximizing the return to

2 all creditors.

3 Q Thank you for that response and insight. So let's talk

4 about the specifics of when you (indiscernible) to get

5 appointed as the administrator (indiscernible). Clawbacks

6 (indiscernible) just recently after voting was completed,

7 unfortunately. The claw backs proposed for retail clients,

8 customers, creditors only with a limit of 20 days between

9 the point of petition (indiscernible). My understanding is

10 that for retail customers, the standard clawback period is

11 90 days with one year for insiders. As a potential

12 administrator on a go-forward basis, are you abiding by that

13 20-day limitation only for retail customers, no clawbacks

14 for insiders?

15 THE COURT: What is this 20-day period?

16 MR. AZMAN: Your Honor, Mr. Hendershott is

17 referring to an amendment to the APA that was filed I think

18 a few days ago. What I think Mr. Hendershott -- I'm going

19 to try to help Mr. Hendershott with the question here. What

20 Mr. Hendershott may not realize is that -- yeah. What Mr.

21 Hendershott may not realize is that as part of the

22 transaction with Binance, Binance specifically negotiated to

23 acquire all claims that the estate has against customers.

24 Of course the idea being that they're basically buying

25 Voyager's customers. They don't want the estate to turn

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1 forward, what is your viewpoint on the status of whether

2 this should have been Chapter 7 or Chapter 11.

3 MR. CALANDRA: Your Honor, I object to this

4 question. It's not even relevant what his view is on this.

5 THE COURT: Do you really object?

6 MR. HENDERSHOTT: It's going to be (indiscernible)

7 as we ask follow-on questions. You know, his methodology,

8 his pursuit of clawbacks, releases, communication style

9 (indiscernible) appointed to the role of administration.

10 THE COURT: I actually don't think it has anything

11 to do with those points, but I will allow him to answer the

12 question.

13 BY MR. HENDERSHOTT:

14 A It was a long question, but what I would say is that

15 Chapter 11 of the Bankruptcy Code is used to reorganize

16 businesses, it's frequently used to sell businesses, and it

17 can be used to liquidate businesses. The purpose and the

18 goal of every Chapter 11 case is to maximize value for the

19 benefit of creditors.

20 In this case, I believe that the plan that is before

21 the Court is the best method of what I've been aiming to

22 achieve throughout this case, which is to get the most

23 amount of money back to creditors as soon as possible.

24 And in terms of -- there was some reference to claims

25 and causes of action. That is the work that continues to be

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1 around and sue the customers they just bought. Very common

2 in bankruptcy.

3 We have, however, a provision in the APA that

4 allowed the Committee to go to Binance and show them certain

5 transactions that we would request that they allow to be

6 carved out so that they could be preserved for the benefit

7 of creditors. They had no obligation to agree if we came to

8 them. But we did to go them with certain criteria. And

9 there were really two criteria that we came to them with.

10 One was former customers who were not creditors as of the

11 petition date. And the idea behind carving those customer

12 claims out is that they're not creditors. They don't even

13 have an opportunity to vote on the plan, by the way. But

14 there should be no reason that Binance would care if the

15 estate were to investigate and pursue former customers who

16 do not move over to Binance, nor could they. Because,

17 again, they don't have anything on the platform.

18 There are 32,000 customers that fall into that

19 bucket. We call them former customers. Binance agreed to

20 amend the APA in that manner. In addition to that -- and

21 it's approximately 32,000. I think it's like 32,800 or so.

22 In addition to that, the second criteria -- and

23 there were 92 creditors that satisfied the second criteria.

24 Essentially what we were looking for were indicia of

25 customers who may have had advanced notice of the freeze or

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the withdrawal limits that were getting ready to be imposed on customers and thus got their money out before others did. And that is what we went to Binance with. And we thought that that would be justifiable to Binance, and it was. And I don't think that they would have accepted anything else for the reasons that I stated earlier.

Mr. Hage, as counsel to Mr. Raznick, has nothing to do with whether that negotiation ended up in the place it did, of course. Mr. Raznick will have to live with whatever the plan and the APA say, and that is what is before Your Honor. I hope that's helpful, and I'm sorry to bring an argument to this, but I thought it would be helpful to clarify for Mr. Hendershott.

MR. HENDERSHOTT: I do appreciate that, Mr. Azman. So the question is --

THE COURT: Hang on, Mr. Hendershott. We've got to -- because of the timing, we have to probably terminate and re-log in. Is that it, Jackie? Does everybody need to dial back in or do you just need to do it?

CLERK: No, I just need to do it. That's all.

THE COURT: We'll take five minutes.

(Recess)

THE COURT: All right. Please be seated. I think we've reconnected to Court Solutions. It is quarter to seven. I would say that -- I'm not sure everybody

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exist here. I think that the primary focus in this case has been on specifically trying to exercise, execute a transaction quickly that would get money back to creditors. And so other than as necessary and appropriate for purposes of dealing with the release issues that are in the plan, I would say a comprehensive investigation of all of the potential claims and causes of action that may be pursued by me as the plan administrator has not yet been conducted. But it will be conducted. And if we conclude that there is merit to those claims and that there are collectable entities that are pursued such that it's a good use of creditors' money to pursue them, we will pursue them.

Q That's great. (indiscernible). Under the current manner of clawbacks, instead of the standard 90 day for retail and one year for insiders -- and Mr. Azman can correct me if I'm wrong. My understanding is it's 20 days for retail, a defined subset that Mr. Azman clearly articulated, and zero clawbacks for insiders. Am I misunderstanding that?

THE COURT: I think if I understand it correct, it's 90 days unless somebody has become a Binance customer, in which case part of the sale agreement and the exchange for the \$20 million and other consideration was that claims against that person would be released except that the release would not apply as to those persons if they had

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appreciates it, but in light of the number of pro se people who are interested, I have been much more lenient than usual in terms of the questions I have allowed. I have tried to do that to try to make sure that everybody feels like they've had their questions addressed, even if not totally to their satisfaction, even where we've frequently strayed off the issues that are actually before us today. But given how late it already is, I will just make a plea that we focus on what's left of relevance to Mr. Hage himself, which is whether he has any conflicts of interest and whether he is appropriate for the choice as plan administrator.

So, Mr. Hendershott, I think you were asking questions. Would you like to continue?

MR. HENDERSHOTT: Yes, Your Honor. Thank you.

BY MR. HENDERSHOTT:

Q So, Mr. Hage, we left off on clawbacks, which is going to be a primary role of your position. Is that correct?

A Did you say clawbacks?

Q That's correct.

A I wouldn't characterize that as the primary role here. As Mr. Azman noted, the Committee was able to negotiate to retain some of the -- by clawbacks I assume you mean bankruptcy preference actions -- was able to negotiate that some of those be preserved. But, look, there's a wide variety of potential claims and causes of action that may

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advance knowledge of the closing of the platform and if they withdrew within -- that's where the 20 days comes in. Am I right about that?

MR. AZMAN: Yeah. I don't remember the exact number of days. It might be 20 days. But yes, exactly what you said, Your Honor.

THE COURT: Okay. And is there any proposed limitation of the one-year insider preference period? Not that I recall.

MR. SLADE: I'm sorry, what was the question?

THE COURT: Is there any proposed limitation of the one-year insider preference period?

MR. SLADE: No, but if they're covered by the release -- that was --

THE COURT: Okay. I see. That's right. Yes. There is in the sense that they're released. That's right. Okay.

MR. HENDERSHOTT: So I'm correct. It was zero clawbacks for insiders, 20 days for retail.

THE COURT: No. No, that's not -- when you say 20 days for retail, 90 days for retail unless you are customer who has gone to Binance, in which case the claim preference clawback claims are released except that those people will not be released if they knew about the closing of the platform in advance and made withdrawals within the 20 days

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1 before the platform was closed down. Have I stated that  
2 correctly, Counsel?

3 MR. AZMAN: The only slight clarification is it's  
4 not that they knew about it, because we don't know yet if  
5 they knew about it. They're being preserved based on  
6 indicia that we've developed, and they will be investigated.  
7 They may not even be pursued. This is nothing about whether  
8 or not --

9 THE COURT: So it's 90 days for retail unless  
10 you're a Binance -- become a Binance customer, in which case  
11 it may be narrower. Okay?

12 MR. HENDERSHOTT: Okay.

13 BY MR. HENDERSHOTT:

14 Q So, Mr. Hage, I've spoken to numerous bankruptcy  
15 lawyers. This is the first time I've ever heard of any  
16 retail being clawed back and no action taken -- that's the  
17 other for the insiders. And actually, the law extends the  
18 timeline for insiders specifically because they have more  
19 responsibility, more insight, more knowledge than the  
20 typical retail customer. So can you justify how all  
21 insiders are let off the hook from this very painful process  
22 (indiscernible)?

23 THE COURT: I'm sorry, Mr. Hendershott, that's not  
24 Mr. Hage's decision. That's a provision of the plan. And I  
25 will hear your argument as to whether that should happen.

1 it after the winddown trust entity is in effect?

2 THE COURT: Make amendments to what?

3 MR. HENDERSHOTT: The plan that you just mentioned  
4 he has to comply with after your ruling, which  
5 (indiscernible) of the plan (indiscernible) couple of days.  
6 I'm curious if the administrator is authorized to continue  
7 revising the plans post conclusion of the case and during  
8 the lifespan, which could be years, of the winddown entity.  
9 THE COURT: There are specific code provisions  
10 that apply to request to modify a plan after it has been  
11 confirmed. It is not impossible, but you have to satisfy  
12 certain standards and you have to come back to me to get  
13 approval to make those modifications. So I don't know if  
14 that answers your question, Mr. Hendershott. But again,  
15 whatever powers there are in general are really not  
16 functions of this plan or of what's been proposed to  
17 delegate to Mr. Hage.

18 MR. HENDERSHOTT: I feel that you've answered my  
19 question. There is a process (indiscernible) potentially by  
20 the administrator, but it's a court internal process of  
21 amendments. Is that correct?

22 THE COURT: Yes, there is. There is a provision  
23 in the Code --

24 MR. HENDERSHOTT: Thank you, sir.

25 THE COURT: Well, let me actually check that.

1 That's a function of the releases that have been proposed.  
2 But whoever is -- if I confirm the plan, whoever turns out  
3 to be the plan administrator will live with whatever the  
4 terms of the plan are. It's not going to be that person's  
5 decision as to whether those insiders were already released  
6 or were not already released. That's an issue that's  
7 separate from anything that Mr. Hage would have any possible  
8 control over. It will either have happened because the  
9 releases are approved, or it won't happen because the  
10 releases won't be approved, and you can make your arguments  
11 when we talk about releases later. But it really has  
12 nothing to do with what Mr. Hage is going to do. He'll have  
13 to live with whatever --

14 MR. HENDERSHOTT: (indiscernible).

15 THE WITNESS: Whatever claims or --

16 MR. HENDERSHOTT: (indiscernible).

17 THE WITNESS: (indiscernible) assigned to the  
18 trust, I will investigate and pursue as any proper fiduciary  
19 would do.

20 BY MR. HENDERSHOTT:

21 Q Great. (indiscernible). I'm not an expert by any  
22 means. I thought you had more autonomy to make those  
23 decisions.

24 So as the plan administrator, once it's approved by  
25 Judge Wiles, do you have the ability to make amendments to

1 Maybe I just misquoted it. There is a provision for changes  
2 to a time after confirmation and before substantial  
3 consummation. Okay? In other words, if something changes  
4 between the substantial consummation of the -- the  
5 confirmation and substantial consummation, it can be  
6 changed. And I don't want --

7 MR. HENDERSHOTT: Okay. And then after that, Your  
8 Honor, there's no ability to amend?

9 THE COURT: Well, at some point it's done and  
10 there's nothing to amend. I really -- you know, I can't  
11 give you legal advice, and that's about as far as I can talk  
12 to you about just -- you know, I'm not going to give you a  
13 treatise on plan amendments, unfortunately. I can't. I'm  
14 not allowed.

15 MR. HENDERSHOTT: Sure. I understand.

16 BY MR. HENDERSHOTT:

17 Q Okay. So, Mr. Hage, releases. Currently every single  
18 entity that's touched this case, from the Debtors  
19 (indiscernible) officers, employees, every single  
20 professional, everyone except for the creditors are  
21 receiving releases in this case. Can you (indiscernible)  
22 that that is appropriate, especially under the recent  
23 rulings of Purdue and even the Supreme Court just came out  
24 with a ruling last week (indiscernible). Is that  
25 appropriate in your opinion?

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MR. SLADE: I object Your Honor. I don't know how the witness is supposed to answer that question.

THE COURT: He's not the one -- he is not the one proposing the releases. Do you understand that?

MR. HENDERSHOTT: He provided consult to the chairman of the UCC (indiscernible). Am I wrong?

MR. SLADE: That is privileged, Your Honor.

THE COURT: Well, he can't testify about advice he gave to Mr. Raznick.

MR. HENDERSHOTT: I'm not asking for his discussion with Mr. Raznick. I'm asking for his opinion.

MR. AZMAN: I don't even know that he did (indiscernible).

THE COURT: Yeah. I will sustain the objection.

BY MR. HENDERSHOTT:

Q Okay. Moving on. There was a lot of discussion, Mr. Hage, about your experience, and it was very impressive. (indiscernible) and may have just missed it, is your experience in this particular role as a plan administrator. Could you -- forgive me if you have to repeat it. But could you expand on that, please?

A I have not personally served as a plan administrator before. I have on multiple cases represented post-confirmation fiduciaries. So I am very -- it's a significant part of my practice. And so I am very familiar

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on (indiscernible). But my only concern is this is the first major crypto bankruptcy. It's a mega case. The first thought that comes to my mind, Mr. Hage, is maybe your first role as plan administrator could be on a less-complex, smaller size, not with all the novel complexity that is found in this case.

MR. AZMAN: Is that a question?

THE COURT: Yes, it's a question.

MR. HENDERSHOTT: It is a question.

THE COURT: What do you think?

BY MR. HENDERSHOTT:

A I would say that because the plan contemplates a transaction where much of the crypto assets will be transferred prior to my taking the position, I think that crypto, while an important part of this case, in many ways the role of the plan administrator will be similar to the role of the plan administrator in every Chapter 11 case, which is to investigate and pursue causes of action. And there aren't a lot of cryptocurrency in bankruptcy experts in the world because this is a very fairly new experience with the crypto bankruptcy cases that have been filed over the last eight months. I would say that I have quite a bit of knowledge and experience about the intersection of cryptocurrency and bankruptcy as a result of my involvement in these cases.

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with the duties that exist for post-confirmation fiduciaries, the legal issues that come up with the types of claims and causes of action that are frequently pursued and I expect will be investigated here in the process.

Q Okay. So I didn't miss it. There is no direct experience as a plan administrator before. And you (indiscernible) about being a bankruptcy judge. I don't know if that was purely (indiscernible) or maybe a combination of both. But would being a plan administrator be on the pathway for you to achieve being a bankruptcy judge (indiscernible)?

A I think when bankruptcy judges are selected, that the respective court of appeals looks at a variety of factors. An applicant's professional experience, an applicant's personal integrity, his reputation within the community, both locally and beyond that. His empathy, his or her empathy for creditors, his judicial temperament. These are all things they look at in deciding who to select for a judgeship. And so in terms of relevant experience, I think that having experience serving as a fiduciary would probably be something that a court would look at and view as a positive thing so long as the fiduciary acted as a fiduciary, which certainly is my intention.

Q That makes sense. So (indiscernible) the motivation (indiscernible). That's a very admirable path that you're

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Q Interesting. You talk about the (indiscernible) with the previous creditor. Have you seen the objection to the motion for approval of the plan that was submitted with the survey results, that was submitted to them through a third party, independent, SurveyMonkey, about the creditor class satisfaction with the representation, the letter of communication that was provided from your client to the creditor class?

MR. CALANDRA: It's not in evidence, Your Honor.

THE COURT: I'm sorry?

MR. CALANDRA: The survey results are not in evidence. They're hearsay.

THE COURT: The only question so far is --

MR. HENDERSHOTT: They are in evidence.

THE COURT: The objection --

MR. HENDERSHOTT: You submitted them --

THE COURT: The objection is overruled. You've asked him if he's seen them. I'll let him testify.

BY MR. HENDERSHOTT:

A I did read that objection, as I've tried to read all of the objections to the plan that have been filed.

Q And did you see that 97 percent of the creditors that responded voted that the UCC representation has been a failure to the creditor class?

A I remember the survey. I don't remember the details of

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the survey.

Q Okay. And so it's on the docket. It's document number 161. And if you trust me, I can read the results to you. It's 97 percent of the creditors responding perception of failure of UCC representation. 94 percent of the creditors responding Jason Raznick in his role as UCC chairman failed the creditor class.

You were directly responsible for providing guidance to Mr. Raznick as that chairman of the UCC committee. Do you find these findings concerning, significant? Is there any lessons learned (indiscernible) your own behavior and engagement between yourself as administrator and the creditors that you would take away from these survey results on a go-forward basis?

A What I take from those results is that there is a group of creditors in this case who are dissatisfied with the committee representation. I will say that -- I was not the committee. I did not represent the committee. I represented a member of the committee. But I know that in terms of communications with creditors, there were I believe four town halls that the committee professionals -- I was not one of them -- participated in and answered questions for lengthy periods of time from creditors in the case. I know that they have maintained a Twitter link to provide updates on the case. And I believe that this committee

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for Mr. Hage?

MR. JONES: Seth Jones, pro se, Your Honor.

THE COURT: Okay, Mr. Jones.

MR. JONES: I've got some questions.

BY MR. JONES:

Q Jason Raznick in the past has said that he had to hire a (indiscernible) lawyer before the UCC professionals were hired. How much work did you do for the UCC members (indiscernible) in this case?

THE COURT: Can you answer that question?

MR. AZMAN: Could I -- I'm not sure I heard.

THE COURT: The question was how much work did you do for Mr. Raznick before McDermott was hired to --

MR. JONES: No, no. the group. By the group.

THE COURT: I'm sorry?

MR. JONES: By the group.

MR. AZMAN: He didn't represent the Committee.

THE COURT: He didn't represent the Committee, so I'm not sure what your question is.

MR. JONES: No. Jason Raznick in the past has said that he hired a personal lawyer which helped (indiscernible) that a lot of work had to go in to figure things out. How much work was he involved with the other members of the UCC before McDermott was hired?

THE COURT: Were you -- were you involved in any

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tried very hard to communicate as much as possible when you have a creditor body of this size. But I was not personally involved in those discussions.

Q Well, that's my concern. So I'm not hearing that you would do anything different. And actually, as part of the objection, (indiscernible). Pardon?

THE COURT: What was the question?

MR. HENDERSHOTT: Can you hear me?

THE COURT: We can hear you. But what was the question?

MR. HENDERSHOTT: I haven't finished asking it yet. Proceed?

THE COURT: If you have a question, proceed. Yes.

BY MR. HENDERSHOTT:

Q Yes. So as part of that same objection, Mr. Hage, (indiscernible) with the creditors that your direct communication expressly stating that it was not the responsibility of the UCC to communicate. And that is a direct result (indiscernible) to the 90-plus percent dissatisfaction rate. So it's very concerning to hear that you wouldn't change anything and that you feel that the level of communication (indiscernible) in this case. (indiscernible) and I will pass on the podium at this point. Thank you, Mr. Hage, for your time.

THE COURT: Okay. Are there any other questions

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work with the other members of the Committee before McDermott was hired?

THE WITNESS: I was.

THE COURT: Okay.

BY MR. JONES:

A I met -- I spoke with Mr. Raznick for the first time sometime in mid-July. I believe the creditors' committee selected McDermott in late July. It is common in the -- I don't remember exactly the date when the creditors' committee was formed, but it was sometime in the middle there. It is not uncommon when there are appointed for them to have their attorneys participate in that process. That was I think particularly important in this case because, whereas in many cases the creditors' committee consists of usually seven trade creditors, some of whom have familiarity with the bankruptcy process.

In this case, the diverse committee that was appointed by the Office of the United States Trustee consisted all of retail customers of Voyager who, to my knowledge, none of whom -- no, I believe actually one of them may have served on a creditors' committee before, but most of them had no experience with the bankruptcy process at all.

And so as an attorney representing one of the members of the Committee for that week or so period before McDermott was hired as the counsel for the Committee, I took efforts

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1 to help organize the Committee in terms of helping to deal  
2 with a deluge of pitch packages that Committee members  
3 received and coming up with an organized process of  
4 identifying who we wanted to interview, who they wanted to  
5 interview, and who they -- not me -- wanted to select.

6 Q Do you think in that week process, that gave you a leg-  
7 up on getting appointed by the winddown trust?

8 A No.

9 Q How many applied and how many interviewed for the  
10 winddown trust?

11 A I cannot speak to how many applied. I believe that the  
12 Creditors' Committee interviewed three individuals. I say  
13 that because it was in a pleading, I believe, that the  
14 Committee filed. But I don't know how many people expressed  
15 interest in it.

16 Q What is the voting procedures for the UCC when voting?  
17 Is it one-by-one or is it a blind vote or what?

18 A As is customary for creditors' committees -- and I have  
19 a lot of experience working with creditors' committees, as  
20 do many of the other attorneys in the room here, it is -- I  
21 have never seen a committee where it wasn't true that each  
22 committee member -- again, it's usually seven members --  
23 each committee member gets one vote. No one member's vote  
24 carries more weight than any other committee member. The  
25 chair does not have veto power or a more weighted vote.

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1 THE COURT: Was abstaining the same as voting no?  
2 Is that what you are asking?

3 MR. JONES: Abstain. Abstaining.

4 THE COURT: Yeah.

5 MR. JONES: Abstaining to a vote.

6 BY MR. JONES:

7 A I know that at the time Mr. Raznick voted, the decision  
8 had already been determined because the requisite majority  
9 of committee members had already voted not to object to the  
10 settlement. Why Mr. Raznick -- and this was a heavily  
11 debated thing. This was not an easy decision. It was not  
12 an easy decision for any of the committee members. It was  
13 heavily debated and deliberated on. Because those committee  
14 members are all retail customers, just like you, sir. And  
15 those -- so anyway, he was the last to vote. The decision  
16 had already been made at that point. And why he abstained  
17 as -- instead of simply voting no or joining the pack, I  
18 can't answer that. Joining the majority I should say.

19 Q When did the vote take place to appoint a plan  
20 administrator?

21 A I don't recall the exact date, but I would -- I think  
22 it was probably in late October or early November.

23 Q You said this is a complex case. Do you think one  
24 trustee should have the power to control \$135 million  
25 (indiscernible) recovering a billion dollars?

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1 It's not done proportionate based on the size of a  
2 creditors' claim. Each of the usually seven members gets  
3 one vote, and it's majority rule with the exception that to  
4 the extent there is any sort of conflict issue that comes  
5 up, that somebody recuses themselves.

6 Q What was the voting procedures when they vote?

7 A What was the voting procedures?

8 Q Yeah, how did the voting procedures work? Is it a one-  
9 by-one vote?

10 A Yes. Well, I've seen it done different ways. Usually  
11 committee meetings are going to be run by the professionals  
12 for the committee. In this case, that would be McDermott  
13 and FTI. When an issue is presented for a vote, each  
14 creditor votes. And usually they just roll through the  
15 roster, vote yea or nay.

16 Q So one by one.

17 A That's correct.

18 Q Okay. So -- all right. Why didn't Jason Raznick vote  
19 no if he claimed that (indiscernible). You said abstain is  
20 the same method as voting no.

21 THE COURT: I think there were two questions  
22 there. Which one do you want to ask?

23 BY MR. JONES:

24 Q Okay. Do you think abstaining is the same method as  
25 voting no?

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1 A Well, keep in mind that there is a three-person plan  
2 administrator governing board. There is one plan  
3 administrator. And the plan administrator in this case will  
4 need to and will -- I will hire competent, experienced,  
5 capable professionals to help fulfill that duty. So yes, I  
6 do think it's good, it's sufficient.

7 And the alternative of having multiple trustees just  
8 means more professional fees, which at the end of the day  
9 will eat away at the recovery for customers and creditors.  
10 All creditors, not just customers.

11 Q Is this true? The plan administrator shall have the  
12 exclusive right, power, and interest to review, reconcile,  
13 enforce, elect, compromise, settle, or elect not to pursue  
14 the vested actions -- causes of actions, including, without  
15 limitation, FTX, Alameda, and 3AC?

16 A There are provisions that deal with the plan  
17 administrator's authority. And there's a generally broad  
18 provision like that. There are some caveats to that I  
19 believe where the amount at issue is subject to above a  
20 certain threshold. I don't remember what those thresholds  
21 are. But generally that's right. The plan administrator is  
22 a fiduciary whose job is to decide which claims to pursue or  
23 not to pursue, when to settle or not to settle, when to  
24 litigate or not to litigate. And of course any fiduciary  
25 would do that based on discussing and deliberating with the

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professionals who that fiduciary has retained. And of course in this case, like most cases, because there is a trust or plan administrator governing board, in consultation with them as well.

And in some cases, settlements are frequently done by filing a motion with the bankruptcy court for approval of settlements. And so in some cases, that may be something that we would do as well.

Q Thank you for your time. I appreciate it.

A You're welcome.

Q That's all.

THE COURT: All right. Is there anybody else on the phone who wishes to cross-examine Mr. Hage? Okay.

In that case, is there anybody here, any redirect for the Debtors or any -- excuse me, examination by the Debtors?

MR. SLADE: No, Your Honor. Thank you.

THE COURT: No? Redirect by the Committee?

MR. CALANDRA: No, Your Honor.

THE COURT: Mr. Hage, just very briefly. If you uncovered circumstances that called -- that you thought suggested that you ought to criticize the work that the prior committee had done or that McDermott Will & Emery had done, would you feel any hesitation or limitation on your ability to make those criticisms?

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statement that the SEC staff thinks maybe the VGX token is a security. It's kind of irrelevant because it's like Kirkland & Ellis saying something, our client is not allowing us to say it on behalf of our client. So I'm not sure how relevant it is, but it may have an impact on what the Debtors need to do with our plan. And I think we need some time to think about it. Just as an example. We might need to amend the plan to add an 1145 exclusion into it if the SEC might take this position.

And so what I would ask Your Honor to do is leave the evidentiary record open to allow us to do that if we decide that the debtors want to amend the plan. And, Your Honor --

THE COURT: We can reopen the evidentiary record if the plan is amended. Would that serve your purpose? Do we need to leave it open at this stage?

MR. SLADE: I would ask that you leave it open, because I'm just not sure how we're going to handle it.

THE COURT: All right.

MR. SLADE: I mean, in some respects the position they took this afternoon was even weirder than the kind of nothingburger that they gave the Court yesterday. So I just don't know what to do with it. But I do know that the Debtor professionals and the committee professionals need to talk about it.

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THE WITNESS: No.

THE COURT: If you had to object to a claim by Mr. Raznick, would you have the ability to do that, or would you need to have conflicts counsel?

THE WITNESS: I think if there was an objection to a claim of Mr. Raznick -- and that is precisely the reason that I requested that there be that conflict provision there, because ethically I don't think that that would be something I could or should do.

THE COURT: Somebody else would handle that then.

THE WITNESS: That's correct.

THE COURT: So any decision about his proof of claim or about preference actions against him, somebody else would decide?

THE WITNESS: Absolutely.

THE COURT: Okay. All right. You are excused. Thank you very much.

THE WITNESS: Thank you, Your Honor.

MR. SLADE: I know it's late, Your Honor. Mike Slade for the Debtors. Before we close the evidentiary record, there was just one thing that the Debtors wanted to tell the Court.

I think we're just kind of struggling with what to do with what the SEC said, you know, an hour or two ago. You know, after years of doing nothing, now we have a

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THE COURT: Okay. On timing. We're not going to have argument tonight because it's already 7:20. And I would like to be able to understand the arguments, participate in them. Monday I am committed to judge one of the quarterfinal rounds at the moot court competition that Mr. Hage has organized. So that would make it difficult for us to continue on Monday, unless you wanted to start argument on Monday afternoon. Or we can resume Tuesday.

But in either event, I would think that you're going to have to have agreement by Binance to move that milestone about the entry of the confirmation order. Because I won't have enough time to hear argument even if we do it on Monday and to make sure that we get something entered even if I were to rule that way.

MR. GOLDBERG: Your Honor, Adam Goldberg. I'm asking my client right now.

THE COURT: Okay.

MR. SLADE: Mr. Azman was mentioning he may have a scheduling conflict. If we can work it out, does the Court have availability on Wednesday?

MR. AZMAN: Well, actually, I don't think it works for Debtors. So don't -- are we going to be in-person for argument? I guess that's the question I had. Is there any --

THE COURT: I would prefer that, yeah. Tuesday I

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1 have some hearings at 10:00 that should not take an  
2 extraordinary amount of time. And I have the rest of the  
3 day Tuesday. On Monday, I cannot remember what time my  
4 round starts at St. John's. I just don't remember. But I  
5 would only have -- whatever time I could give back here, I  
6 would only have a few hours in the afternoon.

7 MR. SLADE: As long as we can get relief from the  
8 milestone, that --

9 THE COURT: Resuming Tuesday would be best.

10 CLERK: Your Honor, if we start on Tuesday, it  
11 would have to be Tuesday at 11:00 a.m. And I would ask that  
12 the parties -- is this going to be Court Solutions or is it  
13 going to be a hybrid hearing?

14 THE COURT: It will be the same way we've done the  
15 hearing itself.

16 CLERK: I would ask those parties who are going to  
17 participate through Court Solutions to please register your  
18 appearance before the hearing and register at 11:00 a.m.  
19 Please don't make all different times. Today I have to  
20 download 15 participation lists.

21 THE COURT: Okay. But let's make sure that that  
22 is our time before we ask everybody to do that. We've still  
23 got a lot of shuffling in the courtroom here.

24 MR. SLADE: Sorry, Your Honor, just reviewing  
25 schedules.

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1 MR. SLADE: Your Honor, the preference of the  
2 parties is Monday afternoon if you can accommodate.

3 THE COURT: Sorry?

4 MR. SLADE: The preference of the parties, if you  
5 can accommodate, is Monday afternoon.

6 THE COURT: Okay. We'll never finish Monday  
7 afternoon, you realize that. Okay. We'll --

8 MR. AZMAN: Your Honor, I think the parties  
9 collectively have scheduling conflict basically for the rest  
10 of the week next week.

11 THE COURT: We will resume on Monday at -- Mr.  
12 Hage, what time are the quarterfinal rounds? Do you have  
13 any idea what my schedule is on Monday?

14 MR. HAGE: I don't. I think you're right. I  
15 think that the judges in the Eastern District and the  
16 Southern District of New York are right after lunch. But I  
17 also know that you (indiscernible) St. John's, they could be  
18 moved to the morning though.

19 THE COURT: Well, is it just after lunch or just  
20 before lunch? I can't -- I thought it was just before  
21 lunch, but I could be wrong.

22 MR. HAGE: I don't have -- I'm not involved -- for  
23 the record, I'm not involved in the selection  
24 (indiscernible).

25 THE COURT: Everybody is going to have to wait

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1 THE COURT: I understand.

2 UNIDENTIFIED SPEAKER: Your Honor, while that's  
3 happening in the background, may I just speak for a minute  
4 to thank you?

5 THE COURT: Well, I'll never turn anybody down who  
6 wants to do that.

7 UNIDENTIFIED SPEAKER: So I have 15 years of legal  
8 experience, and I've been in a lot of courtrooms. And so  
9 I've seen a lot of judges. And this whole confirmation  
10 hearing is the first time I've actually participated in a  
11 hearing. And lo and behold (indiscernible). But there have  
12 been other creditors who have participated in the hearing,  
13 and there has been mixed reviews. Some people saying, you  
14 know, you seem like a good judge, some people saying that  
15 they would prefer a different judge.

16 But I just want to say from what I've seen, you,  
17 compared to other judges I've seen in my lifetime, are  
18 actually very patient, very understanding, very helpful, and  
19 very accommodating of us creditors. And I just want to say  
20 that I really do appreciate that, and I hope you have a  
21 great weekend, and I will see you Tuesday.

22 THE COURT: Thank you. On that patient,  
23 understanding, and helpful stuff, can I get you to send that  
24 to my son?

25 UNIDENTIFIED SPEAKER: (indiscernible).

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1 while I call up my schedule here.

2 MR. HAGE: The first round (indiscernible) and  
3 then (indiscernible).

4 THE COURT: Yeah, I know it's the second round. I  
5 just can't remember if it's before or after lunch. I  
6 thought it was just before lunch.

7 MS. TREVINO: Your Honor?

8 THE COURT: Yeah.

9 MS. TREVINO: This is Lisa Trevino, pro se  
10 creditor. I just wanted to quickly ask you something. I  
11 reached out to Kirkland & Ellis from our last hearing, not  
12 this confirmation hearing. And I still don't have the  
13 information that I had asked for. And it is the third, and  
14 we have to get our information done by the 16th. Apparently  
15 that's 13 days away. And seeing that I've been on these  
16 confirmation hearings, I will have to work (indiscernible).  
17 I am trying to get an answer on when I'm going to get that  
18 information. I've sent emails, calls. I've spoken only  
19 with one person. The gentleman called me back  
20 (indiscernible). He said they were going to go back to  
21 Voyager to get that information.

22 MS. SMITH: Your Honor, this is Allison Smith at  
23 Kirkland. I actually corresponded with Mr. Trevino this  
24 week and did relay to her that Voyager is pulling that data  
25 and would send it as soon as they have it available and

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1 offered to set up a call to walk through it with her. So  
2 it's all in process and we are trying to get to her as  
3 quickly as possible.

4 MR. TREVINO: I understand. But what I'm trying  
5 to say is 13 days is not going to be enough time. And  
6 that's going to be an issue. And, Your Honor, I would  
7 really ask that you would move that back seeing that I have  
8 asked for this information for quite some time and there is  
9 a problem with my claim and I am really asking you to do  
10 that, to move it back a little bit.

11 THE COURT: Let me just ask you. Work with the  
12 Debtors. See what information you get. If for some reason  
13 you need an extension of the deadline, you can ask then for  
14 an extension of the deadline. But let's first just see if  
15 they can get you information and see if it requires anything  
16 else at that point. Okay?

17 MS. TREVINO: I think I missed what you said, sir.  
18 It was too low. I couldn't hear you very well. I'm sorry.

19 THE COURT: What I was saying was just talk to the  
20 Debtors. Get the information when they have it. If you  
21 find at that point that you need an extension, you can ask  
22 for it. But let's take it a step at a time. First get the  
23 information and then see how much of an issue there is and  
24 whether we really need any more time. Okay?

25 MS. TREVINO: Okay, Your Honor. I appreciate

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1 a different time Monday. 10:00 Monday. Okay?

2 UNIDENTIFIED SPEAKER: Your Honor, I intend to  
3 argue, but I have to travel to Ohio for another matter on  
4 Tuesday morning. So can I do it by telephone?

5 THE COURT: Yes, you may.

6 UNIDENTIFIED SPEAKER: Thank you.

7 THE COURT: All right. Anything else before we  
8 adjourn for the day? Okay. Thank you very much.

9 (Whereupon these proceedings were concluded at  
10 7:31 PM)

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1 that. I will be updating you. Thank you very much.

2 THE COURT: All right. I've finally gotten to my  
3 schedule. And I am completely wrong. I am not judging the  
4 quarterfinal round, I am judging the semi-final round, which  
5 starts at 1:00 on Monday and ends sometime around 3:00 or  
6 3:15.

7 MR. HAGE: I suspect that if you contacted the  
8 (indiscernible), they could reschedule you for morning or  
9 find a substitute.

10 THE COURT: Well, they might. But it's already  
11 7:30 on Friday. How are they going to do that?

12 MR. HAGE: I can make a call (indiscernible). I  
13 know, for example, that there (indiscernible) who has  
14 volunteered to do a fill-in if necessary. And I suspect  
15 that there are other judges in the preliminary round session  
16 who would be willing to switch to make the accommodation.

17 THE COURT: Well, if it's a fill-in, then I can  
18 just give you the entire day. And with apologies to St.  
19 John's and the Duberstein competition just let myself be  
20 replaced. Are you sure you have a replacement?

21 MR. HAGE: (indiscernible).

22 THE COURT: All right. In that case, we will  
23 resume Monday at 10:00.

24 So notwithstanding what Lorraine said earlier, if  
25 you're calling in for Court Solutions, Monday at 10:00. Not

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1 I, Sonya Ledanski Hyde, certified that the foregoing  
2 transcript is a true and accurate record of the proceedings.

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8 Sonya Ledanski Hyde

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[claw - collective]

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[collectively - compare]

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[witness - yeah]

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1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 - - - - - x  
4 In the Matter of:  
5  
6 VOYAGER DIGITAL HOLDINGS, INC., Case No. 22-10943 (MEW)  
7  
8 Debtor.  
9 - - - - - x  
10 VOYAGER DIGITAL HOLDINGS, INC.,  
11 Plaintiff,  
12 v. Adv. Case No. 22-01133 (MEW)  
13 DESOUSA,  
14 Defendant.  
15 - - - - - x  
16 THE AD HOC GROUP OF EQUITY INTEREST  
17 HOLDERS OF VOY,  
18 Plaintiff,  
19 v. Adv. Case No. 22-01170 (MEW)  
20 VOYAGER DIGITAL HOLDINGS, INC.,  
21 ET AL.,  
22 Defendants.  
23 - - - - - x  
24  
25

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U.S. Bankruptcy Court  
One Bowling Green  
New York, New York 10004

Monday, March 6, 2023  
10:13 AM

B E F O R E :  
HON. MICHAEL WILES  
U.S. BANKRUPTCY JUDGE

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HEARING Re: To reconsider approval of the disclosure  
statement and confirmation of the Chapter 11 plan

HEARING Re: Motion by Michelle D. DiVita to appoint a  
Chapter 11 trustee

HEARING Re: Motion by Tracy Hendershott to convert case to  
Chapter 7

HEARING Re: Motions by Alah Shehadeh

HEARING Re: Motion for an equity committee and to hold the  
directors personally liable

HEARING Re: Objection to the Official Committee of Unsecured  
Creditors to proofs of claim nos. 11206, 11209, and 11213

HEARING Re: Adv. Pro. 22-01133-mew. Motion to extend  
automatic stay or, in the alternative, for injunctive relief  
enjoining prosecution of certain pending litigation against  
the debtors, directors, and officers

HEARING Re: Adv. Pro. 22-01170-mew. Pre-trial conference.  
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PROCEEDINGS

THE COURT: Please be seated. All right. And we're ready to continue on the Voyager case.

MR. SLADE: Yes, Your Honor. Good morning.

THE COURT: Good morning.

MR. SLADE: Mike Slade for the Debtors. I hope you had a good weekend. We have a couple of updates for the Court. First is that Your Honor had made three requests of Binance at the beginning of the confirmation hearing. And Binance has agreed to make the changes for the first two.

First, we added language to the plan, clarifying that cryptocurrency that is sent to Binance for customers will always be held in trust by Binance. So I think what Your Honor had said --

THE COURT: For all time.

MR. SLADE: For all time. Your Honor wanted to make that clear, and there's additional language now. This is in the revised plan that was filed at Docket No. 1138 at Article 4(c) on page 31. And so I think it makes it abundantly clear, and hopefully the Court will agree.

Second, Your Honor had asked with respect to the unsupported jurisdictions that Binance give a cash out option to all customers after three months in parallel with the option given to, Your Honor used the example of customers in Ohio, and Binance has agreed to that. That

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appears in language that is in the new plan Article C(3)(c)(i)(A) on page 23 of the plan. And so those two issues should be resolved.

Your Honor had also asked them whether it was possible to segregate customer data. That, we were not able to convince them to change for Binance. They could explain this to you whenever Your Honor would like, but it's an economic issue for them. One of the things they bought of the transaction was customer data, which Voyager had the right to sell under Voyager's customer agreement and privacy policy. So two out of the three changes were made, and the revised plan was filed at Docket No. 1138. And I would offer that into evidence.

THE COURT: What is the problem on the data transfer?

MR. GOLDBERG: Your Honor, Adam Goldberg of Latham Watkins on behalf of Binance.US. Thank you for the opportunity to address the Court on this issue.

Essentially, Your Honor, the data transfer is from Binance.US's perspective a core economic element to the deal. This is a retail case, and in the retail world, getting a customer in the door is everything. And so what this --

THE COURT: Well, I thought what I said the other day was that I didn't mind the transfer of the customers'

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contact information, that it was just the remainder, the customers' bank account, social security number, things like that that would be transferred only after a customer had elected to become a customer of Binance. So what's wrong with that?

MR. GOLDBERG: So on those issues, that data remains valuable to Binance.US, regardless of whether the customer joins.

THE COURT: How?

MR. GOLDBERG: Well, it can be valuable if the customer ever joins the platform in the future. As Your Honor is well aware, over the last year we've seen tremendous volatility in the crypto markets. People can choose to exit the market and maybe come back in in the future. And having that information reduces the cost materially of onboarding a customer by having their KYC information on hand already.

On this point, I think, Your Honor, it's important to note that the Voyager privacy policy squarely provides the ability of Voyager to transfer this data in connection with the transaction to sell its assets, expressly including a bankruptcy case.

THE COURT: Is there any reason you want it, other than potentially to make onboarding easier in the future?

MR. GOLDBERG: Your Honor, that's the primary

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information that's been accumulated here by Voyager.

I'm not convinced that just the possibility that some customer will change his mind in the future and elect to become a Binance customer is good enough reason to send everybody's -- all of everybody's sensitive information to Binance, even people who may not want to be Binance customers.

MR. GOLDBERG: Your Honor, I should add Binance provides the ability for any customer to delete their accounts and their data. If a customer joins the Binance platform and clears their assets out of that account, they can then delete their account and their data on Binance.

This goes to the fundamental point, Your Honor, Binance.US wants the opportunity to have customers experience the platform.

THE COURT: If I require the wind down trustee, or it should be the wind down plan administrator. I'm sorry, the terms have been changing so much that I'm having trouble using the right one. If I require the plan administrator to keep custody of the customer data, so that if you do have somebody who changes their mind in the future, it can be immediately transferred to you by that customer. Why doesn't that solve your issue?

MR. GOLDBERG: Well, that requires additional resources on Binance.US's part, as well as materially

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reason. It is a valuable data. It reduces the cost of onboarding. And it was part of the purchase price agreement, and I think that that is a core part of why the transaction was agreed at this pricing level.

I think Mr. Tichner (ph) testified that Binance.US was asked to modify these terms and that this was an economic point that affected the purchase price. So we would respectfully request that Your Honor approve that part of the transaction as part of the confirmation as a whole if Your Honor is so inclined on the basis of the 97 percent class acceptance of the transaction that evidences the interest of the estate and the will of the majority behind this transaction, Your Honor.

THE COURT: I have to tell you, I'm not entirely convinced.

MR. GOLDBERG: I understand that parties have raised issues with this aspect of the deal. No one has submitted any law or evidence contrary to the legal position that the -- each --

THE COURT: Well, just because you can do something doesn't mean you should. Right? There's got to be a business -- good business reason for it.

People, especially these days, are entitled to have concerns about their sensitive financial and personal information, particularly given the nature of the

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impacting, you know, administrative expenses of the case --

THE COURT: Why does it require additional resources on your part?

MR. GOLDBERG: Well, I think rather than having a bulk data transfer, it would require additional data transfers as and when people elect in the future. The ability of having that data, and having someone be able to clear their account and trade very quickly is of economic value to Binance.US. They would not have agreed on this purchase price without these terms. Mr. Tichner testified to that and that was uncontroverted, Your Honor.

THE COURT: I don't remember him testifying to that specifically. And I certainly don't have testimony from Binance on that point. So you're saying customers can elect to erase data and get rid of their accounts, right?

MR. GOLDBERG: Yes.

THE COURT: So why shouldn't a customer have the right to opt out of this data transfer and say that you don't get their information?

MR. GOLDBERG: Well, that's a great question and that goes exactly to the retail nature of this case, is that Binance.US negotiated for the opportunity to have customers experience the platform. Because it's one thing to say I don't want anything to do with Binance.US, it's another thing to experience the platform and decide after you have

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1 the opportunity to take a look at it.

2 Getting the customer in the door is the value of  
3 this deal, and that's the core fundamental economic  
4 proposition.

5 THE COURT: Nobody is going to be in the door  
6 unless they elect and sign Binance's various -- whoever's on  
7 the phone, stop talking. Mute yourself. I'm having a  
8 question with counsel here, please.

9 Customers have to go through other procedures  
10 before they -- it's not like they're automatically --  
11 without doing anything else, customers of Binance, right?

12 MR. GOLDBERG: That's right, Your Honor. The  
13 customer has to accept the Binance.US terms.

14 THE COURT: And if they don't, nothing happens.  
15 So I'm still stumped here. Why shouldn't a customer be  
16 allowed to say, I don't want you to have my data?

17 MR. GOLDBERG: Well, each customer agreed in their  
18 contract with Voyager, Your Honor, that Voyager had their  
19 data and could sell that data as part of a transaction.

20 THE COURT: But I already said, just because you  
21 legally can do something doesn't mean you should.

22 MR. GOLDBERG: I understand, Your Honor. The  
23 reason -- the equitable reason that we should do this  
24 transaction is because all customers benefit with payment of  
25 money into the estate from these terms, and they would not

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1 seeking new -- a new injunction, Your Honor.

2 THE COURT: You've added to your proposed order  
3 brand new injunctions that would broadly ban the federal and  
4 state governments from contending that an of your  
5 transactions -- restructuring transactions are illegal or in  
6 violation of any state or federal regulation of any kind,  
7 and that would ban them from suing any person involved in  
8 the transactions to stop them in any way, or to hold them  
9 liable in any way.

10 You didn't seek such thing. In fact, just the  
11 opposite of what you sought and what your original order  
12 said. How is that an appropriate way to seek an injunction?

13 MR. SLADE: I guess that's not our interpretation  
14 of what we're seeking. And if we need to adjust the  
15 language, we can. What the Debtors are trying to do is, you  
16 know, create a transaction and once we implement that  
17 transaction in good faith, assure that we are not going to  
18 be, you know, come after -- after the fact, after Your Honor  
19 has approved the transaction.

20 To us, it's aligned with the common exculpation  
21 terms that are in, you know, nearly every plan.

22 THE COURT: Not really. I don't think I've ever  
23 issued an order in connection with plan confirmation that  
24 says that if a regulator thinks there's a problem, the  
25 regulator can't stop.

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1 have agreed -- Binance.US would not have agreed on these  
2 economic terms without acquiring all of this data.

3 THE COURT: And what if I were to just say that  
4 anybody who hasn't become a Binance customer within six  
5 months, you're required to delete their data?

6 MR. GOLDBERG: So I don't know, Your Honor. I'd  
7 have to consult with my client. I don't think that that  
8 would be part of the deal, and I believe that they would  
9 seek economic adjustments to the transaction.

10 THE COURT: All right. You should talk to your  
11 client and find a solution to this because I'm having  
12 problems with it. Okay?

13 MR. GOLDBERG: Thank you, Your Honor.

14 MR. SLADE: Thank you, Your Honor. Again, Mike  
15 Slade for the Debtors.

16 As I told you when we last left on Friday night,  
17 the Debtors regrouped over the weekend to try to assess what  
18 to do in light of the SEC's position. The other amendments  
19 that were made to the plan that was filed yesterday relate  
20 to the 1145 exemption. To the extent --

21 THE COURT: Do you seriously think that filing a  
22 proposed order on Friday that has new injunctive terms is  
23 compliance with due process with the procedures for seeking  
24 an injunction?

25 MR. SLADE: I don't perceive us as being --

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1 MR. SLADE: We're not saying that, Your Honor. If  
2 --

3 THE COURT: Sure, you did. That's exactly what  
4 your proposed order says.

5 MR. SLADE: So we certainly can work on the  
6 language. What our position is, is that if the SEC were --  
7 let's say, as an example, the plan is confirmed, and then  
8 two weeks later, Cepheus says we want to block the  
9 transaction. We're not saying that Cepheus doesn't have the  
10 power to do that. They do. What we're saying is that our  
11 efforts to implement the order that Your Honor would approve  
12 today, that --

13 THE COURT: What if two weeks from today, the SEC  
14 wants to accuse Binance of being an unregistered  
15 broker/dealer and to shut its operations until such time as  
16 it files registration?

17 MR. SLADE: Same thing.

18 THE COURT: They can do that?

19 MR. SLADE: They can do that.

20 THE COURT: It didn't look to me like they could  
21 do it from reading your order.

22 MR. SLADE: Well, what we are trying to accomplish  
23 is that -- what we are doing to effectuate the plan, until  
24 and unless they change the rules, okay, they can't come back  
25 to us and say retroactively, you are violating the rules,

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even though all you were doing is honoring and trying to effectuate a court order to return cryptocurrency to customers. That is not -- that is not a fair outcome.

THE COURT: Let me put it differently. Are you saying that you don't want individuals who are doing what I have given them permission to do, to be subject to penalties?

MR. SLADE: Correct.

THE COURT: So you're not trying to stop anybody from doing what they can -- what their regulatory authority would otherwise permit them to do?

MR. SLADE: Correct.

THE COURT: Simply saying that if I authorized them based on the evidence in front of me, they shouldn't be penalized based on a regulator later saying, by the way, I didn't tell you at the time, but this was wrongful.

MR. SLADE: Correct, Your Honor. And I'll just -- as an example, Your Honor authorized us to start the rebalancing when Your Honor approved the APA a month or so ago. Then we see in there a filing that they think that might violate the securities laws. It doesn't make any sense for us to come and propose a plan, and for us to get approved and start implementing it because we want to return cryptocurrency to customers as soon as possible, and then for the regulators to come at us after the fact that said,

we could have those three things removed, our objection to that language would be taken care of.

THE COURT: All right. We'll get to the exculpation a little later, but I was more focused on the new language that was proposed, and just what it was trying to get at and what the proper scope of it would be.

How about the SEC or the Justice Department? The other people who weighed in on this. With that clarification, do you have an objection?

MS. SCHEUER: Your Honor, Therese Scheuer from the U.S. Securities and Exchange Commission.

Your Honor, I think we would need to see the precise language that the Debtors are proposing. I would note that, you know, we have objected to confirmation on the plan because there are risks that, you know, the transactions may violate the security (indiscernible - 10:25:44). And to somehow, you know, be enjoining us because -- in the face of our highlighting these regulatory concerns is -- you know, Section 523(a)(19) (indiscernible - 10:26:06) prohibits -- excuse me, Your Honor, prohibits the discharge of securities (indiscernible - 10:26:13) violations in individual bankruptcy cases.

So I'm just unclear about precisely what the Debtors will be seeking with this revised language.

THE COURT: I think what they're saying is -- you

oh, yeah, remember those super vague rules? They meant that was illegal. That is not what's supposed to happen here.

THE COURT: A number of governmental entities who've objected to your language, if all of the language is -- if we change it to clarify, the only thing that it's doing is saying that the people who have done what I have authorized them to do are not liable for having done so, do you have a problem with that?

MR. SLADE: That's fine, Your Honor.

THE COURT: Let me ask -- I assume that the SEC and the other agencies who would object to this language are on the phone, although I haven't looked at the list. Are they there?

MS. RYAN: Good morning, Your Honor. This is Abigail Ryan with the State of Texas. And we did object to the language. Were changes to clarify that language are fine. I think that very helpful because we read that language as you did, to be very broad.

The only other portions that are objectionable are the references back to paragraph 97 and 99 in the plan, and to the exculpation provision. I mean, 97 and 99 in the proposed order, and exculpation provision in the plan.

That basically guts any type of regulatory enforcement as it excludes us from bringing any type of case. They're injunction provisions, Your Honor. And so if

know, at this point, the SEC hasn't actually taken a position. It's sort of indicated to me in what I can only describe as conclusory terms that there might be an issue as to the VGX token. But I think all the Debtors are saying is that, look, if based on the evidence that I have today, I authorized the Debtors to do certain things, then the people who do what I say that they can do shouldn't be penalized or in hindsight subjected to penalties for allegedly having violated laws and regulations that the applicable regulators haven't stood up in front of me and said affirmatively that they're being violated. That's just not fair.

You know, I understand, and nobody's trying to stop you from making arguments as to whether something's illegal, but if you want to penalize the people who will actually do what they're proposing to do, and that I may authorize them to do, you ought to be speaking up and taking a more affirmative position today and not just showing up later and say, got you. You know? We didn't give you any reason to think that what you were doing, you know, was going to be punished, but you know, now we've decided to do so.

I mean, that's just -- how is anybody supposed to do anything in the world if they have that hanging over their heads?

MS. SCHEUER: Your Honor, it's not in every case

that we raise these kinds of concerns. The SEC has objected to plan confirmation. We objected at the disclosure statement phase. We objected to the motion to approve the sale. The Debtors here are seeking to immunize themselves and third parties. And they're -- I mean, the language that they have in now, and I understand, you know, that it's -- they may be changing it, but it would allow them to make securities laws and other violations in connection with their restructuring transactions.

They're asking Your Honor for permission to violate the securities laws to give them essentially a blank check. We've raised concerns regarding the sale. We filed an objection to the sale and disclosure statement. The parties have been on notice that there are regulatory concerns here and they've proceeded at their own risk.

I think that we would have to analyze the -- you know, any revised language (indiscernible - 10:29:10) if we could get comfortable with it.

THE COURT: The parties who are in front of me are entitled to know whether they can proceed or not. If you want to reserve the right to try to stop them and enjoin what they're doing, if and when you eventually make up your minds about this stuff, then I'm not going to stop you from doing that.

But are you seriously telling me that without

way that doesn't, in hindsight, come back and unfairly punish the people who may do what I authorized them to do. If that's not good enough for you, then we'll have a full-blown litigation today about whether this is legal or not, and I'll make findings on it today. And they will bind you.

And I cannot imagine that you want that. Okay?

So all the Debtors are suggesting is that when we have no clear contention that anything is in violation of law, quite the opposite. We have the regulatory agencies sort of -- practically deliberately avoiding taking a position on the issue. That when I authorize it to go forward and, in fact, order that it go forward by my approval, that those people who are doing what I have authorized are not subject to penalties or liabilities for having done so. That's standard exculpation that I've done in a lot of bankruptcy cases.

So I would hope you would agree to that because the alternative is we just have to open up the hearing. Because the one thing I'm not going to do is basically say, go forward, but take your chances. That's not fair. It's absolutely not fair. I don't know anybody in this case who would or should go forward with that kind of risk hanging over their heads.

So the language that I've approved in other cases, I don't have it memorized, but in the Aegean (ph) case, I

taking a position on the issue at all, and only telling me what the potential issue might be in a limited sense, that I should leave a sword hanging over the heads of anybody who's going to do this transaction, and tell them that although I'm approving it, by the way, you might get -- you know, be the subject of an enforcement action, and subject to whatever penalties the securities laws might impose on you, that it's okay with me, but, you know, you'd be crazy if you did anything because you have no idea what the government might do.

How can a bankruptcy case or any court proceeding function with that kind of suggestion?

MS. SCHEUER: If Your Honor is suggesting language that is (indiscernible - 10:30:37) with 1125(e).

THE COURT: I mean, look, if you want to do it a different way, I'll tell you -- I'll compel you to come forward with your evidence. And I will hold against you as a matter of collateral estoppel and res judicata if you don't come forward with it. Okay?

So there's no way that I'm going to approve a transaction that essentially says to the business people involved here, go ahead. Go forth. Subject yourself to penalties. Okay?

I'm trying to leave you the ability to do what your regulatory authority compels you to do, but just in a

said that parties were exculpated from liability for entering into and performing under agreements and transactions that have been approved by the Court. Okay?

And I think all the Debtors are saying is, you know, it's just like personal liability of the people involved. We're not trying to stop you from saying that as a regulatory matter, something should be stopped. It's just if you come in later and say, you know, we didn't tell you at the time, but that was illegal and you're subject to this fine and penalty. That's what it's meant to focus on.

MR. SLADE: Your Honor, the language we were looking at over the weekend was from Aegean and also from the Fairway case that Honor had.

THE COURT: Mr. Morrissey?

MR. MORRISSEY: Your Honor, very quickly. Richard Morrissey for the U.S. Trustee. Good morning, Your Honor.

I just -- just for a point of clarification regarding what Your Honor just said, coupled with what Your Honor said a few moments ago about when we're going to deal with the exculpation issues in general, I'm perfectly prepared to wait for that.

But one of the issues we had was who generally is covered by the exculpation provision, not just what actions are covered. And I can defer that, but one of the issues we have is that the distribution agent is included in the

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exculpation provision. As a matter of fact, something was just added to Article 6 of the plan, stating that rather specifically, and I just didn't know when Your Honor wanted to deal with that issue. But I'd be happy to wait if that's Your Honor's preference.

THE COURT: Let's wait.

MR. MORRISSEY: Thank you.

THE COURT: All right. Does the SEC need time to

--

MR. BARNEA: Good morning, Your Honor. I'm sorry. Can you hear me over the telephone?

THE COURT: Who's speaking?

MR. BARNEA: This is J.B. Barnea from the U.S. Attorney's Office. We filed a limited objection to the last proposed approval order last week, and then we saw the revised language last night. If it would be possible for the government to be heard as well.

THE COURT: Yes.

MR. BARNEA: So our concerns are somewhat different, although overlapping with those of the other governmental entities that Your Honor just heard from. We cannot agree to an order that broadly immunizes all participants, including non-debtors, from all possible liabilities to all possible government authorities in connection with implementing, you know, a variety of

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should both have a positive obligation to do those things, and be subject to punishment under different statutes for doing exactly what they are obligated by my order and the Bankruptcy Code to do, makes no sense. Okay?

So if somebody thinks that what the individuals, what the Debtors are going to be doing is illegal, they should be speaking up. Okay? We are not going to bar people from enjoining things. All we're saying is that people shouldn't be subject to punishments.

If the SEC wants to step in and say Binance should not be allowed to go forward because it's operating as an unregistered dealer, I don't think anybody is stopping them. If the SEC wants to try to enjoin the distribution of VGX, I don't think we're trying to -- well, maybe we're trying to stop that, depending on the 1145 issue that I haven't heard yet. But not by this language we're not.

All we're saying is in the context of exculpation, you know, that there are people here who are going to be ordered by me to do these things when I confirm the plan. And that should carry with it an exemption from legal liability for doing what I am, in effect, ordering them to do. Unless you want to step forward and tell me why I shouldn't order them to do it. And so far, nobody's been willing to do that.

Telling me people on notice. First of all,

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transactions.

Transactions may incur taxable income. They would then have to be responsible for those texts -- for the resulting payment of tax. And if there's a disagreement, the IRS has to be free to go after them. People might commit fraud in some ways, civil or criminal, in engaging in transactions. The government has to be free to pursue that fraud. People may violate all -- any number of rules or regulations. We understand that the Court is prepared to approve a transaction. It seems that way. And that's fine.

And in the event that --

THE COURT: Nobody is trying to deal with any of those things. Here's the issue. Under Section 1142(a) of the Bankruptcy Code, the Debtor and any entity organized or to be organized for the purpose of carrying out a plan, shall carry out the plan. Okay?

There is an affirmative statutory obligation once I confirm a plan for the plan to be carried out. Now, nobody has been willing to come forward and to actually have a litigation in front of me today on the question of whether anything that the plan would require the Debtor or the winddown Debtor to do is actually illegal.

And if I confirm the plan, those people will have a positive obligation under the Bankruptcy Code to do what the plan contemplates. So for anybody to suggest that they

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nobody's on notice of anything here. I have a hard time understanding just what basis it is for the limited things that you told me the other day. And I certainly, if I were one of the individuals who had an obligation to carry out this plan, I wouldn't feel very comfortable that I knew exactly what risks I was taking.

MR. BARNEA: Your Honor, the government -- putting aside -- the government -- the parts of the government that I represent right now, as opposed to the SEC or any other office that may be separately represented in this case, don't have any current sense that any specific transaction is itself illegal. But that does not mean that someone may not in executing those transactions violate some rule or regulation, or incur a tax liability, or do something else that may expose them to some kind of liability to the government. And that is --

THE COURT: That's fine.

MR. BARNEA: -- what we are trying to protect against.

THE COURT: They may vary from what they're compelled to do under the plan, and may engage in who knows what the mind can invent that might go wrong. And nobody's trying to say that people are freed from that. They may commit tax fraud. They may lie. They may do all kinds of things, but the question is, you know, if I'm approving a

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1 plan that authorizes a distribution to VGX, a pointed  
2 example, and by my confirmation of that plan, the Debtors  
3 are under a statutory obligation to distribute VGX in the  
4 way that the plan contemplates.

5 For somebody to come in and say, you people who  
6 did that are subject to fines under the securities laws,  
7 even though you had no choice once I ordered it, would be  
8 rather absurd, wouldn't it?

9 MR. BARNEA: Well, to the extent that the Court is  
10 providing exculpation as allowed under 1125(e), I think  
11 that's uncontroversial. If the question is if the Court is  
12 going beyond that, that is a separate question.

13 THE COURT: Well, I already issued a decision in  
14 Aegean about what I think about exculpation, and that I  
15 think that I do have the power, and it is absolutely  
16 appropriate for me to say that if people engage in  
17 transactions that I approve, after notice and a hearing,  
18 they shouldn't be liable for having done so. That makes  
19 perfect sense to me.

20 Otherwise, I'm in effect having a meaningless  
21 confirmation hearing, and leaving you with a regulatory veto  
22 of what I'm doing. And you may have veto to the extent --

23 MR. BARNEA: Well, another way to put it is Your  
24 Honor is authorizing parties to do something and they are --  
25 those actions are subject to the normal rules and laws that

1 heard any contention that Voyager is the issuer of Bitcoin,  
2 for example, which would -- and I have -- while I won't  
3 contend that I understand all of the arguments about the  
4 commodity and securities laws here, I would have trouble  
5 understanding an argument that Voyager was the issuer.

6 So you've proposed that I find that everything is  
7 exempt under 1145. But under 1145, to the extent that the  
8 plan includes the offer or sale of a security of an issuer  
9 other than the Debtor, that there's an exemption only if the  
10 issuer of such security is required to file reports under  
11 Section 13 or 15(d) of the Securities Exchange Act of 1934.  
12 And in -- okay. I -- just I'll stop right there.

13 You're not prepared to tell me that you have  
14 identified an issuer of all of these cryptocurrencies and to  
15 show that they are in compliance with that provision so that  
16 1145 applies to them, are you?

17 MR. SLADE: We included the language because the  
18 SEC had said that VGX may be a security, and to the extent  
19 they ultimately come to that conclusion, it would be likely  
20 that Voyager was the issuer. So that's what we were talking  
21 about when we included the 1145 language.

22 THE COURT: Yeah, but the language you've proposed  
23 said all of your transactions, all of your cryptocurrency  
24 transfers are exempt under Section 1145. Nice try, but I  
25 mean, you plainly can't satisfy that requirement, can you?

1 all actions in the world are subject to.

2 THE COURT: But you didn't listen to what I said.  
3 When I confirm a plan, I'm not just giving somebody an  
4 option. I'm not telling them that it's okay with me, and  
5 they just take their chances. Under the statute, once I  
6 confirm the plan, there is an affirmative obligation to do  
7 what the plan contemplates. It's not an option. Okay?

8 The people who are involved here are required to  
9 go forward. So it's not like I'm saying, well, it's okay  
10 with me if you want to take that risk. That's not what it  
11 -- that's not what confirmation amounts to.

12 MR. BARNEA: I understand Your Honor's position.  
13 The government respectfully disagrees, and we would like to  
14 see any final language to which we may well still have  
15 objections before this matter is resolved.

16 THE COURT: You can certainly see final language,  
17 and I'll ask the Debtors to dig out from the Aegean case,  
18 and try to propose some language that's more consistent with  
19 that.

20 What about this 1145 issue? You know, I don't  
21 really have any indication at the moment of who is contended  
22 to be the issuer of any cryptocurrency that might constitute  
23 a security. There was a reference to VGX, and my guess  
24 would be that the contention would be that Voyager was the  
25 issuer or is the issuer of VGX. But I don't -- haven't

1 MR. SLADE: We understand Your Honor's point. We  
2 were talking about VGX. Who knows what the SEC is going to  
3 say tomorrow.

4 THE COURT: All right. So you want to say that to  
5 the extent that VGX is intended to be a security issued by  
6 the Debtor, that it's subject to 1145? I don't know. Maybe  
7 they have some theory that it's a security issued by  
8 somebody else.

9 MR. SLADE: I don't know what their theory is.  
10 They won't tell us.

11 THE COURT: But I can't apply 1145 if it's their  
12 -- that's their theory, because you can't show me that the  
13 issuer, if it's somebody else, just complied with those  
14 other requirements. Right?

15 MR. SLADE: Well, I'm not sure if I can or can't,  
16 to be honest. I would have to check with other folks that  
17 know more about the token than me.

18 THE COURT: If the issuer were somebody other than  
19 Voyager, you'd have to show me that the issuer had filed --  
20 had been required to file the reports under Section 13 or  
21 15(d) of the Securities Exchange Act of 1934. How would you  
22 do that?

23 MR. SLADE: I don't know.

24 THE COURT: Yeah. So to the extent you say that  
25 Voyager is the issuer of VGX, you're asking for the

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1 application of 1145.

2 MR. SLADE: Correct.

3 THE COURT: And I saw the SEC's supplemental  
4 objection, where they say that you just haven't made the  
5 showings that you need to, and I think to the extent that,  
6 as I have said, the extent that you wanted to seek the  
7 application of 1145 to every cryptocurrency that you are  
8 transferring, I think the SEC is entirely right. You  
9 haven't and I don't think can make such showings.

10 But as to VGX, is there an -- what's the objection  
11 as to the application of 1145?

12 MS. SCHEUER: Your Honor, Therese Scheuer for the  
13 Securities and Exchange Commission.

14 THE COURT: Yeah.

15 MS. SCHEUER: Your Honor, I will just begin by  
16 noting that these provisions were added to the plan and  
17 confirmation order overnight. We had conjured and knew the  
18 Debtors arguments, to the extent they have any, with respect  
19 to VGX, and to discuss with other divisions, including the  
20 Division of Corporation Finance. It is their role to review  
21 these types of transactions.

22 If it's acceptable to the Court, we would request  
23 permission to make a written submission following argument  
24 on these issues, and any specific questions that Your Honor  
25 may have regarding 1145.

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1 under the terms of the plan?

2 MS. SCHEUER: Your Honor, (indiscernible -  
3 10:50:23) that 1145 is not available for the proposed  
4 transaction because the crypto assets, including VGX, being  
5 purchased and sold were not in exchange for claims. In the  
6 rebalancing exercise, (indiscernible - 10:50:39)  
7 distribution of securities for which there is no Securities  
8 Act exemption.

9 For VGX, the rebalancing exercise appears to  
10 involve within market purchases and sales that are not in  
11 exchange for claims against the Debtor.

12 THE COURT: But when the --

13 MS. SCHEUER: So there's --

14 THE COURT: When the Debtors turn over VGX to  
15 Binance for credit to customers' accounts, how is that not a  
16 distribution on a claim?

17 MS. SCHEUER: Your Honor, I don't think you can  
18 separate out that piece of the distribution from how it got  
19 there. And it got there through the rebalancing transaction  
20 or the rebalancing exercise.

21 THE COURT: Well, the Debtor have held VGX for a  
22 long time. Right? I suspect that if the Debtors have done  
23 anything, they've probably reduced how much VGX -- I don't  
24 -- I have no idea what -- how the rebalancing worked. But  
25 let's just focus on that, you know, to leave aside the

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1 THE COURT: Well, I raised the 1145 issue, and I'm  
2 not sure I -- I'm not sure it's something that the Debtors  
3 have to affirmatively invoke in their plan, is it?

4 MS. SCHEUER: Well, Your Honor, the Debtors have  
5 the legal burden of demonstrating that 1145 of the Code or  
6 4(a)(2) are available exemptions for them. And they've  
7 provided no argument.

8 I am prepared to, you know, go forward with an  
9 argument today, but I think as -- you know, to the extent  
10 Your Honor has an additional specific question --

11 THE COURT: Well, I think the Debtor's initial  
12 position is probably that VGX is not a security. So that's  
13 probably why they didn't mention 1145. And I think what  
14 they're saying is, hey, if you think otherwise, and this is  
15 the question I had for you the other day, if you think  
16 otherwise, the SEC, why wouldn't Section 1145(a) be  
17 applicable?

18 And you're in the same boat you were the other  
19 day, where you keep telling me it's the Debtor's burden.  
20 It's the Debtor's burden. What is it that you think the  
21 Debtor needs to prove that the Debtor hasn't shown in that  
22 case?

23 If VGX is a security issued by the Debtor, what  
24 more do you think the Debtor needs to show to me in order to  
25 be entitled to Section 1145 as to the distribution of VGX

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1 rebalancing. Let's just focus on the distributions. Okay?

2 When the Debtors --

3 MS. SCHEUER: Your Honor --

4 THE COURT: -- deliver things to Binance --

5 MS. SCHEUER: I don't think the Debtor --

6 THE COURT: Obviously, when the --

7 MS. SCHEUER: I don't think the Debtors were --

8 THE COURT: Obviously, when the Debtors give VGX  
9 to Binance for credit to customer accounts, that is a  
10 distribution on a claim.

11 MS. SCHEUER: My understanding, Your Honor, is  
12 that VGX is subject to the rebalancing exercise. It is not  
13 -- the Debtors aren't engaging in a rebalancing of VGX.

14 THE COURT: But when the Debtors take the VGX that  
15 they have and give it to Binance for credit to a customer's  
16 account, that act is plainly in distribution on a claim,  
17 isn't it?

18 MS. SCHEUER: Your Honor, I don't think that you  
19 can separate that fact out from how it got there. And it  
20 got there through the rebalancing transaction -- the  
21 rebalancing exercise.

22 THE COURT: So you're saying -- I understand that  
23 you're saying that the rebalancing may have been  
24 unauthorized transactions in securities. And I'm -- I  
25 understand that you don't want to give up that argument, but

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1 I'm trying to focus on, you know, they are different things,  
2 whether you complained about how the Debtors got them or  
3 not.

4 When the Debtor has turned VGX over to customers,  
5 as the plan contemplates, that plainly is a distribution on  
6 a claim, right?

7 MS. SCHEUER: Again, Your Honor -- I understand  
8 Your Honor's position, but I don't think that you can --  
9 (indiscernible - 10:53:35) position is that you cannot  
10 separate the transaction out into those pieces. You have to  
11 look at how VGX got there.

12 And as part of the rebalancing, you know, it  
13 appears that Voyager is conducting a distribution of VGX to  
14 Binance or any other party that's acting as a broker of  
15 trades on behalf of Voyager in the rebalancing exercise.

16 Neither 1145 nor any exemption for that matter,  
17 including 4(a)(2) is available for Debtors that are  
18 conducting distributions. Nor is it available for  
19 underwriters involved in such distribution.

20 THE COURT: Who is the underwriter here?

21 MS. SCHEUER: Potentially Binance.

22 THE COURT: How is Binance an underwriter here?

23 MS. SCHEUER: It could potentially be Binance or  
24 any other party acting as a broker of trade on behalf of  
25 Binance -- or Voyager in the rebalancing exercise.

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1 giving them a chance to be heard. I'm not going to give  
2 them a long time to be heard because they have had some  
3 notice. But if they want to make a submission, I'm going to  
4 let them make it. And we're going to have to fix our timing  
5 here, because either that or you drop your request as to the  
6 VGX finding, because they're entitled to let me know what  
7 their position is.

8 MR. SLADE: Okay. We also have a milestone for  
9 today that Binnace has not --

10 THE COURT: That's what I'm saying. You better  
11 change it or you better drop the VGX, because we're not  
12 going to do both. I'm not going to overrule the SEC's  
13 objection without letting them be heard, and do all that  
14 today just to meet your milestone. The issue has come up  
15 too late.

16 So I will require them to make a submission. I'll  
17 require it by tomorrow. I'll rule promptly. But you're  
18 going to have to get relief from your milestone. I'm not  
19 going to let your milestone be used to squeeze a party on an  
20 issue that only came up effectively for sure over the  
21 weekend. Okay?

22 MR. SLADE: The other thing I want --

23 THE COURT: I think it was reversible error for me  
24 to do so, which wouldn't serve any of your purposes.

25 MR. SLADE: I'm not sure about that, but I

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1 THE COURT: Is that --

2 MS. SCHEUER: And if Your Honor would like further  
3 detail on that, we would request permission to submit a  
4 written submission.

5 THE COURT: Do you think any broker is an  
6 underwriter?

7 MS. SCHEUER: In the rebalancing transaction,  
8 Binnace or potentially any other party acting as a broker of  
9 trades on behalf of Voyager in that transaction may be  
10 acting as an underwriter.

11 MR. SLADE: Your Honor, briefly. Just to respond  
12 to the SEC's request for more time, I mean we provided them  
13 all the information they requested about VGX in 2021. Since  
14 the bankruptcy, we have responded to numerous information  
15 requests from the SEC. I was on weekly calls with the SEC  
16 to make sure we were satisfying their information --

17 THE COURT: You didn't ask for a specific 1145  
18 finding until you -- until after I raised the issue on  
19 Thursday, and then you mentioned that you might on Friday  
20 night. And then you did over the weekend.

21 MR. SLADE: Well, the SEC didn't tell us that they  
22 even thought anything might be a security until Friday  
23 afternoon, after refusing to take a position the day before.  
24 So --

25 THE COURT: But I'm not going to rule without

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1 understand Your Honor's point. The one other thing I just  
2 wanted to make sure that there was no ambiguity about,  
3 pursuant to Your Honor's order that you entered, approving  
4 our entry into the APA, the Debtors have been doing the  
5 rebalancing. We have been selling VGX. And so I didn't  
6 want Your Honor to be under any other impression, because  
7 that has been happening, as Your Honor authorized us to do.

8 THE COURT: I understand that. No, I do  
9 understand that.

10 MR. SLADE: Okay.

11 THE COURT: Right.

12 MR. SLADE: I was actually just standing up to  
13 complete the evidentiary record, and I was going to hand the  
14 podium to my colleague to do argument. So I guess, Your  
15 Honor, I would offer the revised plan that was filed, which  
16 was Docket 1138. And we did file a supplemental declaration  
17 from Mr. Renzi to explain that as Docket No. 1139. And I  
18 would offer those. And Mr. Renzi is here.

19 THE COURT: But I didn't see any supporting facts  
20 in Mr. Renzi's declaration. It was just the explanation of  
21 why you're seeking it.

22 MR. SLADE: Supporting facts for?

23 THE COURT: For anything. Whether VGX is a  
24 security, whether you're the issuer, whether it's proper to  
25 issue relief as to anything other than VGX. All I see is a

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statement that -- an explanation that you're trying to modify your plan, and that an argument is still -- it's not really a declaration with any facts. It's not testimony. It's an argument.

MR. SLADE: Okay. Mr. Renzi did discuss in the declaration why we were making the change, what the change was, and the fact that the Debtors don't believe VGX is a security, and that we have an opinion letter from a nationally recognized law firm supporting that view. I mean, those are certainly facts.

THE COURT: Are you preparing to offer that opinion letter into evidence?

MR. SLADE: I'm not. I don't have authority to do that.

THE COURT: Well, then telling me there's an opinion letter is just hearsay.

MR. SLADE: Not to the extent that it's offered to show that the Debtors are relying on that fact to take a position.

THE COURT: What -- why do I care what they're relying on to take a position? What does that tell me?

MR. SLADE: I think it explains why the Debtors are making this proposal in the plan.

THE COURT: I don't think I need any further explanation. I know why you're seeking the approval, right?

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the Court's order, that we won't need the 1145 exception, and so we would be prepared to remove it.

And so what I would propose is we just proceed to arguments on the confirmation issues under the premise that we are going to proceed with the plan that does not include the 1145 exception.

THE COURT: Okay.

MR. SLADE: And I would cede the podium to Ms. Okike to do that.

MS. OKIKE: Good morning, Your Honor.

THE COURT: By the way, let me -- the debtors have closed their case, is there any other party that has evidence they wish to offer?

(No verbal response)

THE COURT: Okay, I'll consider the evidentiary record closed then.

MS. OKIKE: Good morning, Your Honor, Christine Okike of Kirkland & Ellis on behalf of the debtors.

Your Honor, in terms of argument, I would propose to address each of the issues raised by the objectors, followed by opportunity for the committee and the purchaser to weigh in, if they so choose, followed by each of the objectors, just in terms of proceeding in a way that makes sense. Does that work for Your Honor?

THE COURT: I think so, but it may make sense to

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It's pretty obvious why you're seeking it. It's a question of whether you're entitled to it.

MR. SLADE: Okay. I guess I'm -- where would Your Honor propose to go from here? I'm not sure.

THE COURT: Well, if you want the -- first of all, I'm not going to give you a ruling on anything other than VGX. And I'm not going to give you a ruling on anything other than VGX insofar as you allegedly are the issuer of VGX. As to whether I give you a ruling on that, I'm going to let the SEC make a submission by no later than tomorrow morning. And I will review it and consider it, and we either get relief from your milestone as to the entry of a confirmation order, or you'll have to drop the 1145 issue as to VGX. I can't do both.

MR. SLADE: Okay. Can we take a recess and talk about that, Your Honor?

THE COURT: Yeah. We'll take ten minutes.

(Recessed at 11:01 a.m.; reconvened at 11:16 a.m.)

THE COURT: Please be seated. Yes?

MR. SLADE: Thank you, Your Honor, we appreciate the opportunity to discuss it and, you know, collectively, we've come to the conclusion that as long as we get the exculpation in the form that the Court has approved in previous cases and we get confirmation that it's going to apply to the rebalancing that has taken place pursuant to

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take issue by issue rather than kind of have you run through your position on all --

MS. OKIKE: Yes, correct --

THE COURT: -- 20 issues.

MS. OKIKE: -- that's what I was proposing.

THE COURT: Okay, good.

MS. OKIKE: So, Your Honor, I'm going to start with feasibility. A number of the objections go to the feasibility of the plan.

We believe the plan is feasible. It provides for either the sale transaction or the liquidation transaction, as applicable, as determined by the debtors to be in the best interests of their estates.

Your Honor, with respect to the sale transaction, a number of the objectors question Binance.US's financial wherewithal and the security of the crypto to be transferred to Binance.US.

Your Honor, based on our due diligence and representations made by Binance.US, as highlighted in Mr. Tischner's testimony, we believe that Binance.US has the financial wherewithal to close the sale transaction.

Under the sale transaction, Binance.US would not be required to pay the debtors the value of the cryptocurrency on the Voyager platform to consummate the transaction; rather, Binance.US will only be obligated to

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pay up to 35 million in consideration to the debtors. We have performed due diligence on Binance.US and Binance.US's financials show that it has ample cash on hand to pay the debtors up to 35 million in cash.

In addition, the risk of a run on the bank, which has befallen some of the other companies in the industry, is minimized by what we understand to be Binance.US's business model. Our understanding, based on sworn statements by Binance.US, is that Binance.US maintains a hundred percent reserves for all of its customers' digital assets. That means that if a customer has deposited one bitcoin with Binance.US, Binance.US holds one bitcoin on account of such customer. And, importantly, Your Honor, our understanding is that Binance.US does not engage in any lending.

Based on what we know, even if all of Binance.US's customers withdrew all of their assets, Binance.US would still have the financial wherewithal to consummate the proposed transaction.

Although the debtors will transfer substantially all of the cryptocurrency on the debtors' platform to Binance.US, assuming that the vast majority of customers onboard onto their platform, Binance.US is essentially serving as a distribution agent of that cryptocurrency to accountholders in accordance with the plan.

Your Honor, the objectors also question the

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debtors' cryptocurrency will not transfer to Binance.US at closing; rather, cryptocurrency and cash will be transferred to Binance.US following closing on a weekly basis as accountholders and OpCo general unsecured creditors complete Binance.US's onboarding requirements.

Second, Binance.US has to make any cryptocurrency and cash transferred to it by the debtors available to those accountholders and holders of OpCo general unsecured claims that have completed the onboarding requirements within five business days of receipt, and to use commercially-reasonable efforts to do it in 48 hours following receipt.

Third, accountholders and holders of OpCo general unsecured claims will retain all right, title, and interest in the distributions made to them on the Binance.US platform.

Fourth, cryptocurrency will be held by Binance.US solely in a custodial capacity in trust for the benefit of accountholders with no time limitation.

Fifth, cash transferred to Binance.US for further distribution to accountholders or OpCo general unsecured creditors will at all times until transferred to such creditor be held solely in a third party bank account of an FDIC-insured financial institution solely for the benefit of such creditors.

Sixth, Binance.US will not pledge, re-pledge,

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security of the crypto to be distributed to customers once transferred to the Binance.US platform. Your Honor, based on our due diligence and sworn statements made by Binance.US to the debtors, we understand that Binance.US holds digital assets of its customers solely in a custodial capacity and on a one-to-one reserve basis. Binance.US segregates customer assets from Binance.US's digital assets on its general ledger. Only employees of Binance.US are able to move customer assets from the platform. Binance.US does not lend or re-hypothecate customer assets.

Binance.US has the technical expertise, required licenses, other than in the unsupported jurisdictions, and existing infrastructure to perform its obligations under the asset purchase agreement, including with respect to the onboarding and making distributions to customers.

Binance.US maintains information security protocols, policies, procedures, and standards consistent with leading industry standards, which are reviewed by multiple independent auditors and which Binance.US believes are adequate to ensure the safeguarding of customer assets and customer personally-identifiable information.

Your Honor, notwithstanding Binance.US's representations, we believe the structure of the sale transaction is designed to minimize risk, which also goes to feasibility. These protections include, first, all of the

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hypothecate, re-hypothecate, invest, sell, lend, stake, transfer, or use any of the cryptocurrency to be distributed to accountholders for any period of time and without retaining a like amount of cryptocurrency, except as may otherwise be directed by such creditors.

Your Honor, the debtors believe these protections significantly reduce the risks associated with the sale transaction and the transfer of cryptocurrency to Binance.US to facilitate distributions to creditors.

Your Honor, you may be wondering why we are still considering the sale transaction given the numerous rumors regarding Binance.US and, Your Honor, the simple answer is that the sale transaction maximizes the value of the debtors' estates.

As Mr. Tischner testified, based on our estimates, the sale transaction will provide over a hundred million of value compared to the liquidation transaction due to, among other things, the costs of restarting the platform and liquidating 20 percent of the unsupported tokens that cannot be withdrawn in kind. Your Honor, the debtors believe --

THE COURT: What happens under the -- remind me, under the Binance deal, what happens if I confirm it and before closing the SEC gets an injunction against Binance doing business?

MS. OKIKE: Your Honor, at that point, we would

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proceed with the liquidation transaction.

THE COURT: What happens with your Binance deal, is it terminated? Who has what obligation to whom?

MS. OKIKE: I would have to look at the specific termination provisions. We do have a fiduciary out, so we can always exercise that, but there are certain regulatory actions which allow us to terminate the agreement without exercising the fiduciary out.

THE COURT: And, if that happens, does one party owe any money to the other for termination, for expenses, for forfeiting of deposits, any of that kind of thing?

MS. OKIKE: It's very fact specific, Your Honor. There are certain circumstances -- if we were to exercise the fiduciary out in the absence of a purchase or a default, it's likely that their expense reimbursement would be triggered, but if there's a regulatory action, there's -- a lot of those provisions were explicitly included in the APA as to not trigger the expense reimbursement.

THE COURT: Okay. And are there circumstances where Binance would give up a deposit or anything like that?

MS. OKIKE: Yes, Your Honor.

(Pause)

MS. OKIKE: So, Your Honor, with respect to the good faith deposit, if Binance were to terminate the APA, in the absence of a seller breach, we would be entitled to the

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MS. SCHEUER: Yes, Your Honor. My apologies, my phone was muted. Therese Scheuer for the Securities and Exchange Commission. And, Your Honor, I should have said it earlier, but thank you for allowing us to participate in the hearing today telephonically.

Your Honor, there's a lot -- going to some of the points that Ms. Okike raised, there's a lack of credible evidence demonstrating that customer assets are secure on the Binance platform. No one from Binance testified and the only evidence submitted about Binance are declarations and testimony from Voyager's professionals.

Mr. Tischner admitted that his team doesn't have expertise regarding the safety of crypto assets or security protocols. He also testified that the debtors haven't hired any expert to assist it in the review of the representations made by purchaser.

Given the specific circumstances of this case, Your Honor, that's concerning. And, as Your Honor has observed, most of the assurances about the safety of assets are based on hearsay. There were apparently some third party reviews of the buyer's security protocols, but the debtors haven't offered an adequate description or details about those reports of evidence. Although there is an officer certificate filed from Binance, it was not admitted for evidentiary purposes and there was no opportunity for

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good faith deposit.

THE COURT: Okay. Okay, please go forward.

MS. OKIKE: So, Your Honor, we believe that the sale transaction, to the extent that it can be consummated and is in the best interests of the estates, is the most value-maximizing option available to the debtors today, but we recognize that this is a volatile industry and circumstances change every day and, for that reason, we included a toggle to the liquidation transaction whereby the debtors would distribute cryptocurrency and cash to creditors on their own if the debtors determine in their business judgment between now and closing that the sale transaction is no longer the highest or otherwise best option.

So, Your Honor, we believe that the plan is feasible whether we move forward with the sale transaction or the liquidation transactions.

THE COURT: Okay.

MS. OKIKE: Would you like to hear from other parties on feasibility before --

THE COURT: Yes. I think the SEC is the primary objector who raised the feasibility; do they wish to be heard?

(Pause)

THE COURT: Is the SEC on the phone?

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cross-examination of the declarant --

THE COURT: What provision of --

MS. SCHEUER: -- and the debtor's professional --

THE COURT: -- Section 1129 of the Bankruptcy Code are you invoking and do you think wasn't complied with by not having a Binance witness testify or by not having an outside security consultant look at the security protocols? Just what is it about that that you think means that I shouldn't confirm the plan or can't confirm the plan?

MS. SCHEUER: Your Honor, we acknowledge that this is a liquidating debtor. The debtor is transferring its assets and its customers to a buyer and I think making it, for practical purposes, a successor, as discussed at the last hearing, the staff believes Binance.US is operating an unregistered securities exchange in the United States. Binance.US and those seeking to trade on Binance.US may be impacted by ongoing regulatory investigations, as previously discussed with the Court. Given these issues, it could be faced with highly challenging legal and practical issues, and Your Honor is well aware of what effect a business failure can have on a crypto platform.

THE COURT: But, you know, it doesn't sound like there's a specific Code provision that you can point to that suggests that I needed to actually have Binance testify about its security protocols, for example, or that the

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1 debtors needed to have an independent expert. You're kind  
 2 of picking away at what the debtors did in due diligence to  
 3 try to criticize it, but in terms of whether there should be  
 4 a sale to Binance, whether that makes sense as a business  
 5 matter, I think, under the applicable Second Circuit  
 6 authorities, my job and the limit of my authority is to  
 7 determine whether the debtors have exercised a reasonable  
 8 business judgment -- not a guarantee, but a reasonable  
 9 business judgment; not even the judgment that I would have  
 10 made, not even the judgment that another reasonable person  
 11 might have made, but a reasonable business judgment.

12 So on some of these points that you're complaining  
 13 about, you're really saying that you disagree; you would  
 14 have hired an outside security consultant and not just  
 15 accepted the audits that the debtors received. You would  
 16 have wanted a witness by Binance, although you didn't  
 17 subpoena a witness from Binance and nobody else did either.

18 But at the same time, while you criticize the  
 19 assurances and the value of the assurances that the debtors  
 20 got, nobody here has offered any -- and I mean any --  
 21 admissible evidence that anything of any kind is going on at  
 22 Binance that is wrong, that it is mistreating -- misusing  
 23 customer assets, that customers who go to Binance will be  
 24 unsafe, that it is not doing what it represented in its  
 25 sworn statement that it does in terms of the handling of

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1 understanding from the debtors, they can correct me --

2 THE COURT: Yeah, I don't --

3 MS. SCHEUER: -- if that is not --

4 THE COURT: -- I don't think that's right. And,  
 5 you know, my job, under 1129(a)(11), is to confirm unless it  
 6 is likely that there's going to be a further reorganization  
 7 or liquidation, the only evidence I have is that it's not  
 8 likely.

9 I mean, I'm as worried as anybody else. I'm the  
 10 one who's probably going to be blamed if anything does go  
 11 wrong here. But, you know, I'm a Judge; I'm not a  
 12 regulator, I'm not an investigator, I have -- not only do I  
 13 have no independent information on any of these points, as a  
 14 matter of judicial ethics, I'm barred from having  
 15 information on any of these points. I can only consider the  
 16 evidence that the parties have brought in front of me.

17 I am aware of scores of hearsay allegations and  
 18 conclusory arguments that, gosh, aren't we worried, maybe  
 19 Binance is another FTX, but I have absolutely -- and I mean  
 20 absolutely -- zero, zero evidence that any of that is true.

21 So, given my role, given what I'm supposed to do  
 22 here, how could I possibly say that the risks of Binance  
 23 here are so great that the debtors could not reasonably make  
 24 the choice that they are making? How could I possibly  
 25 conclude that based on the actual evidence that I have,

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1 customers, that its security protocols are faulty, zero. I  
 2 have absolutely nothing on that point.

3 So criticizing, you know, just how strong the  
 4 assurances are that the debtors have received, how does that  
 5 get me to the point of saying that, as a matter of business  
 6 judgment that the debtors -- no reasonable person could  
 7 decide to go forward with this deal?

8 MS. SCHEUER: Your Honor, I think it goes to both  
 9 the adequacy of disclosures -- and this is the final -- the  
 10 hearing on final approval of the disclosure statement -- and  
 11 also feasibility of the plan under 1129(a)(11) --

12 THE COURT: Well, under 1129 --

13 MS. SCHEUER: -- Your Honor --

14 THE COURT: -- feasibility under 1129(a)(11) just  
 15 means that the confirmation of the plan won't be followed by  
 16 a further reorganization or a liquidation unless a  
 17 liquidation is contemplated in the plan.

18 So I already pointed out --

19 MS. SCHEUER: Yes.

20 THE COURT: -- even if everything goes wrong as to  
 21 Binance and it drops out of the deal, we have a toggle plan.  
 22 So I don't see how confirmation of the plan would create an  
 23 issue under 1129(a)(11).

24 MS. SCHEUER: Your Honor, I think, after the deal  
 25 closes, the toggle becomes unavailable. That's my

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1 particularly when you like to make hints and suggestions,  
 2 but you haven't offered me anything?

3 You know, you criticized the review of the  
 4 security protocols. I don't have any reason -- so far as I  
 5 know, you don't have any reason -- to doubt the security  
 6 protocols that Binance uses, at least you haven't elected to  
 7 clue me in on any.

8 So, you know, all these little kind of nits and  
 9 gnats criticisms, how do they amount -- how do they get you  
 10 to the point of saying that the debtor's business judgment  
 11 has been wrongfully exercised here and no reasonable person  
 12 could want to do this?

13 MS. SCHEUER: Your Honor, I think the issues that  
 14 we're raising can also be looked under 1125 and whether the  
 15 debtors have provided adequate information about risk and  
 16 how it could affect customers who transfer to the Binance  
 17 platform.

18 THE COURT: Well, the debtors told customers that  
 19 they understood that Binance holds assets in custody, they  
 20 told customers that they understand that Binance holds  
 21 assets in a one-to-one ratio, so that -- and that it doesn't  
 22 lend or re-hypothecate. They told customers that they are  
 23 satisfied that Binance has the financial resources to  
 24 complete this deal. Okay?

25 Now, you've called this a disclosure issue. I

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1 said at the beginning and I'll repeat it: this is a  
2 substantive objection masquerading as a disclosure issue.

3 The debtors have made clear that as questions come  
4 up, as newspaper articles appear, they have and will  
5 continue to ask questions of Binance. That doesn't mean  
6 that every single time they have a conversation with Binance  
7 we have to stop, redo the disclosure statement, and start  
8 this entire process over again.

9 We would never get anywhere if we had to do that  
10 and it would be peculiar because, you know -- well, I'm  
11 certainly not going to tell the debtors that they have to  
12 stop doing their due diligence at the risk of having to redo  
13 their disclosure statement. Maybe they haven't done as many  
14 things in due diligence as you think they should have done  
15 or you don't like the degree of assurances that they've  
16 gotten, those aren't disclosure issues. Those are  
17 substantive criticisms of the due diligence, there's no --  
18 the debtors haven't changed their conclusions that they  
19 offered in the disclosure statement.

20 And, you know, you're just saying that you wanted  
21 more, that's all, that you think that the debtors should do  
22 more before they do this deal. I don't think those are  
23 disclosure issues, I think those are questions of business  
24 judgment. The debtors -- I just don't see where, you know,  
25 for example, the fact that the debtors looked at an

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1 THE COURT: -- as to how --

2 MS. SCHEUER: -- as presented --

3 THE COURT: -- as to how this could affect the  
4 ability to trade at Binance, for example, I asked you --  
5 your colleague, actually, was standing at the podium on  
6 Thursday -- if the SEC were to take action contending that  
7 Binance needs to register as a broker/dealer, would that  
8 mean that all Binance activities would have to stop, or  
9 would it just mean that the particular activities that  
10 required registration would have to stop, but that other  
11 activities could continue, and your answer was you don't  
12 know.

13 So now you're telling me that the debtors should  
14 have made a prediction on this point and should have  
15 disclosed to their customers exactly what would happen in  
16 this situation when you yourself couldn't answer the  
17 question. So how does that make sense?

18 (Pause)

19 THE COURT: Do you have an answer?

20 MS. SCHEUER: To clarify, I think, you know,  
21 subject to all of the caveats that were stated at the last  
22 hearing, you know, as to that point, Your Honor, the staff  
23 believes that, you know, based solely on the facts and  
24 circumstances known to the staff that they previously  
25 stated, that Binance.US is operating an unregistered

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1 independent audit of security protocols and didn't  
2 commission their own, I don't see that that's a disclosure  
3 issue in the slightest.

4 And as to the risk of --

5 MS. SCHEUER: Your Honor --

6 THE COURT: -- as to the risk of regulatory  
7 actions, the debtors did say that it's a highly uncertain  
8 regulatory environment. There are several places in the  
9 disclosure statement they said they couldn't predict what  
10 regulators would do. Regulators may decide to take action;  
11 it's an extremely uncertain environment, they don't know  
12 what people might do.

13 So you can't even tell me what you're going to do,  
14 so what was the debtor supposed to say other than what they  
15 actually said?

16 MS. SCHEUER: Your Honor, the debtors didn't  
17 include how distributions to accountholders and their  
18 ability to trade could be affected by regulatory  
19 investigations and potential regulatory actions if they're  
20 successful. You know, Mr. Raznick testified that those  
21 risks he didn't take into account in putting together his  
22 liquidation analysis. These are all disclosure issues that  
23 could have informed how creditors vote on the plan --

24 THE COURT: Well --

25 MS. SCHEUER: -- because the numbers --

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1 securities exchange in the United States, and Binance.US and  
2 those seeking to trade on Binance.US may be impacted by  
3 ongoing regulatory investigations and could be faced with  
4 highly challenging legal and practical issues.

5 THE COURT: Well, did you say that to anybody  
6 publicly before last Friday? And, if not, how are you  
7 contending that the debtor should have disclosed it in the  
8 disclosure statement that they circulated in January?

9 MS. SCHEUER: I think the regulatory risks were  
10 known to the parties -- could have been disclosed by the  
11 parties involved.

12 THE COURT: I'm sorry, I couldn't understand what  
13 you said; could you repeat it?

14 MS. SCHEUER: Regulatory risks could have been  
15 disclosed by the parties involved.

16 THE COURT: They did disclose. They said they  
17 didn't know what regulators might do.

18 (Pause)

19 THE COURT: Are you saying they should have  
20 somehow anticipated the exact statement that you wound up  
21 making this past Friday. They should have read your mind  
22 and known six weeks in advance that you were going to take  
23 that position?

24 MS. SCHEUER: Your Honor, it could have been  
25 modeled from -- in numbers that were provided in the

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liquidation analysis or, you know, further risk factors or caveats added to make clear that distributions could be affected by those risk factors.

THE COURT: I think they did that. They said they don't know what's going to happen with regulators; that the regulators might take action that might influence or impede the completion of the distributions that are contemplated. I don't know what more they could have said.

Okay. I think the disclosures on these points were sufficient and the criticisms --

MS. SCHEUER: Understood, Your Honor.

THE COURT: -- the criticisms of individual due diligence points are just substantive attacks, not disclosure issues. And I don't think that this goes to feasibility in the sense that term is used in the Bankruptcy Code. There could be regulatory issues here, but the debtors, I think, have tried not to eliminate that possibility, you know, that maybe could have taken a different approach and required you to put your proof on, but nobody has tried to do that. They've tried to give you your regulatory freedom to the extent that it makes some sense here, but all they can do in that regard is say, look, there are risks that people might interfere, regulators might interfere, we can't guarantee what will happen.

But, you know, the only alternative to saying

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MR. MORRISSEY: Your Honor, if I may, I do have additional points.

THE COURT: Okay.

MR. MORRISSEY: Your Honor, good morning, Richard Morrissey for the U.S. Trustee. Although I do have additional points to make, there will be some overlap regarding disclosure and feasibility.

At the January 10th hearing on the debtor's motions to enter into the asset purchase agreement with Binance and for conditional approval of the debtor's amended disclosure statement, we pointed out that in the wake of the collapse of Voyager's prior deal with FTX that the creditors wanted to know as much as possible about the new purchaser as they could, not least to be assured that the painful FTX experience would not be repeated in this case.

The creditors had reason to be especially sensitive about the Binance transaction as Voyager was to share their personal information, personal information that Voyager worked so hard to protect at the beginning of these cases with Binance.

Voyager's customers had questions. How stable is Binance? Was the proposed purchaser in the crosshairs of any government investigations? Would any intercompany transactions at Binance impact the customers' cryptocurrency? Was Binance.US truly independent of

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something like that in this regulatory environment would be to sit around for I have no idea how long and do nothing, and wait until Congress and the competing regulatory authorities sort out amongst themselves just who has what authority over what aspects of this business and what kind of authority they have. I have no idea how long that's going to take and we can't do that in bankruptcy. The Bankruptcy Code doesn't contemplate an endless period of time, things have to be done. We have creditors who are waiting and who, in the midst of all this uncertainty, have no access to property in which they've invested, in some case, their life savings.

So we have to take some kind of action, we have to do something, and we can't just put everything on pause just because we don't know for sure how the regulators will eventually make up their minds on points that they seem to have been debating for years. Okay?

I just don't think that that's really a disclosure point here and I don't think it's a reason to criticize business judgment. Things need to be done, the world needs to move.

Okay, let's move -- I think the U.S. Trustee had objections also on the disclosures about Binance and its controls. Are you satisfied or do you have additional points to make?

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Binance.com or Binance.Global?

As the Court has heard over the first two days of this hearing, Voyager's customers still have such questions.

Now, to be sure, Your Honor -- and I'm talking about the disclosure statement here -- if they looked hard enough in various portions of the amended disclosure statement, the customers could find answers to certain other questions such as how their recoveries would be affected if, for example, the litigation with respect to Voyager's intercompany transactions went one way or another, or if Alameda's claim against the debtors were allowed or disallowed. They could also find --

THE COURT: You know, you're standing here telling me that customers found the disclosures on these points inadequate, I don't have a single customer who's taken that position.

MR. MORRISSEY: Your Honor, I apologize if that's what it seems that I said --

THE COURT: That's what you just said.

MR. MORRISSEY: -- that's not what I was trying to say.

THE COURT: You just said that this is all stuff that customers wanted to know, and that might be what you think, but not a single customer has filed an objection on that ground, not a single one, as far as I know.

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1 MR. MORRISSEY: Okay. Your Honor, my point is  
2 what is and what is not in the disclosure statement for any  
3 parties in interest to discover.

4 One example, Your Honor, is that the customers  
5 could find a description of Voyager's security protocol,  
6 both in the amended disclosure statement and in the  
7 declaration that was filed in connection with the debtor's  
8 cash management motion.

9 THE COURT: I'm sorry, what is it, you think  
10 Voyager should have disclosed its own security protocol?

11 MR. MORRISSEY: Well, no, Your Honor. As a matter  
12 of fact, I'm saying that Voyager did. Voyager gave a  
13 description in the disclosure statement regarding its own  
14 security protocol, it did not give a description of  
15 Binance's security protocol. And I'll get into that in just  
16 a moment, if I may, Your Honor. The --

17 THE COURT: Didn't they say that Binance  
18 maintained wallets at Amazon Web Services located in two  
19 jurisdictions and didn't they talk about various  
20 certifications that Binance had provided as to its  
21 compliance with a number of different security standards?

22 MR. MORRISSEY: That was discussed, Your Honor, in  
23 a combination of the declarations submitted shortly before  
24 the hearing --

25 THE COURT: I'm pretty sure it was in the

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1 eventuate.

2 The debtors assure the parties that Binance has  
3 the wherewithal to consummate the asset purchase agreement,  
4 but there's precious little information about Binance.US in  
5 the disclosure statement to back up that assurance. Now, we  
6 did hear testimony regarding that.

7 Also, as far as the mechanisms to protect the  
8 cryptocurrency, we heard that from Voyager's witnesses and,  
9 as Your Honor pointed out, there's something about that in  
10 the disclosure statement --

11 THE COURT: Well, here -- what you just said is  
12 really not so much an argument that there was a lack of  
13 disclosure, but that there was -- they didn't kind of  
14 incorporate all their declarations into the disclosure  
15 statement itself to give a full explanation of all the  
16 homework that they had done and intended to do that  
17 supported the conclusions that they had reached --

18 MR. MORRISSEY: No --

19 THE COURT: -- that's not really a disclosure.

20 MR. MORRISSEY: Well, except that --

21 THE COURT: When does anybody ever do that in a  
22 disclosure statement?

23 MR. MORRISSEY: Well, the -- a lot of the  
24 information contained in the declarations and disclosed in  
25 the live testimony should have been in the disclosure

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1 disclosure statement.

2 MS. OKIKE: Yeah, it's in the disclosure  
3 statement, Your Honor, it's Article 5(b)(1)(B).

4 THE COURT: I reread the disclosure statement in  
5 preparation for this hearing and I remember seeing it there.

6 MR. MORRISSEY: But, Your Honor, what the debtor  
7 provided here in the disclosure statement was assurances  
8 about Binance. The disclosure statement was very  
9 informative about Voyager's history both before and during  
10 the pendency of the cases. It said a lot about where the  
11 customers have been, but very little about where they've  
12 been invited to go.

13 Your Honor, in a conventional sale -- and the  
14 final approval of the sale is up for today as well, as it's  
15 part of the plan, assets are exchanged for proceeds and the  
16 latter has a reasonably equivalent value to the former.  
17 Here, the 20 million or the maximum 35 million amount to far  
18 less than the value of the assets.

19 The vast bulk of the sale involves the transfer of  
20 the crypto held by Voyager to the Binance.US platform.  
21 Although the crypto goes to Binance.US, the debtor's due  
22 diligence cannot follow the crypto to Binance.US. Once the  
23 crypto has been transferred, the matter is out of Voyager's  
24 hands. Voyager's control of the asset is limited to either  
25 the 20 or the 35 million, or whatever number in between may

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1 statement before the ballots went out, so that the people  
2 voting could make a more informed decision as to what they  
3 were voting on.

4 And, Your Honor, I'd like to interject one point.  
5 It's been repeated many times over the last two days and  
6 even in the press about the fact that 97 percent of the  
7 creditors supported the plan and they had overwhelming  
8 support among the creditors. As I said the other day, Your  
9 Honor, six percent of the creditors voted on the plan; I  
10 don't know why the 94 percent did not, but the overwhelming  
11 majority of the creditors did not.

12 Having said that, Your Honor, I do concede, as I  
13 did the other day, that what Your Honor has to consider in  
14 terms of whether there's adequate support is in fact the  
15 votes that were actually cast, not the ones that were not  
16 cast. So we understand that, but I just want to make sure  
17 that everyone is clear that there is not an overwhelming  
18 support for the plan among the entire creditor body.

19 THE COURT: By the same token, I heard a couple of  
20 customers complain about Binance and say they didn't want to  
21 go to Binance, only a few. So, out of the thousands of  
22 customers who voted and the, what, million customers that  
23 exist, I have less than a handful of customers who objected  
24 to the proposal of having the debtor deal with Binance here,  
25 recognizing that we've also tried to set it up so that

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customers who don't want to have Binance accounts don't have to have Binance accounts and are free to elect not to have that; right?

MR. MORRISSEY: Yes, Your Honor, and there's also the toggle to the other plan, which we do recognize.

THE COURT: So nobody is forced to be a Binance customer who doesn't want to be a Binance customer.

MR. MORRISSEY: That is correct, Your Honor.

MS. PROVINO: (Indiscernible) --

THE COURT: Who is speaking?

MS. PROVINO: I'm sorry. This is Lisa Provino, pro se. I just wanted to support something that Mr. Morrissey is saying that is quite --

UNIDENTIFIED SPEAKER: (Indiscernible) --

MS. PROVINO: -- which is quite important. I found yesterday that -- and the reason -- this is on his first comment about us not commenting on some of the documents, Your Honor, there have been documents on Stretto that have been deleted. Please note for the record that Docs. 66, 70, 149, 219, 187, 184, 165, 359, 380, 381, 382, 497 (indiscernible) 607, 359, and 1049 documents have been deleted from Stretto.

So it has been very challenging for us, as we have mentioned multiple times, to keep up, but it's even worse when the documents have been deleted. And so, if they have

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THE COURT: But it didn't have to be, it was --

MS. PROVINO: That one --

THE COURT: -- it was mailed out, right, Ms.

Okike?

MS. PROVINO: I went through -- and then I wanted to mention something else as well.

THE COURT: Well, you should have gotten a big document in the mail.

MS. PROVINO: Sir, I did not. I have gotten nothing in the mail.

MS. OKIKE: Email, email.

THE COURT: Email, excuse me, in the email.

MS. PROVINO: On Document 863? I'm sorry, which are you speaking of? Please clarify for me.

THE COURT: The disclosure statement that we're talking about should have been sent to you by email in approximately mid-January.

MS. OKIKE: Along with a ballot --

MS. PROVINO: No, I did not receive it.

MS. OKIKE: -- for you to exercise your vote.

THE COURT: Along with a ballot.

MS. PROVINO: No, if you remember, this goes to the point -- another point of Mr. Morrissey that 94 percent of the people didn't vote. May I comment again that 3506 people were blocked from voting? Yes, I understand that we

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been deleted and we have not been able to respond, I want for the Court to know that it's unfair, and we did support what -- excuse me -- what Mr. Morrissey has just stated.

THE COURT: Okay.

MS. PROVINO: So --

THE COURT: You're not --

MS. PROVINO: -- meaning that (indiscernible) --

THE COURT: You did get the disclosure statement; right?

MS. PROVINO: No, not the one that -- which one are you talking about, sir? The one that you mentioned that we didn't respond to that Richard Morrissey just brought up. Which disclosure statement are you speaking of? As I mentioned, there were multiple documents --

THE COURT: There is no --

MS. PROVINO: -- deleted off of Stretto and I'm very upset about that.

THE COURT: There was a large disclosure statement submitted in connection with the request for confirmation of the plan.

MR. MORRISSEY: Your Honor, if it may help, I do remember one ECF document number for the amended disclosure statement, I believe that's the one we objected to, it was Document Number 863 on the docket and I hope that is still there.

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got an email about the ballot, but, if you remember correctly, there were several of us that had complained.

And we went to extreme lengths, we did call Mr. Morrissey, as well as many other regulatory bodies that we possibly could, in addition to the debtor. So I just want to see things for the record because --

THE COURT: Let me ask you to hold -- let me ask you to hold on those complaints while we just finish with Mr. Morrissey's comments about the disclosures. Okay? And then we'll come back to you.

MS. PROVINO: That's fine, but I just wanted you to know about we support what he just said and I need you to know that, sir, that's all --

THE COURT: I understand.

MS. PROVINO: -- and especially about the documents, I'm very upset about that as well.

THE COURT: Okay. Go ahead.

MR. MORRISSEY: Thank you, Your Honor.

(Pause)

MS. OKIKE: Your Honor, just to address that point. We understand from Stretto that the docket numbers referenced were removed because they included customer PII.

MS. PROVINO: But that was never mentioned to us at all, so we could have at least downloaded those.

(Background noise)

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1 THE COURT: All right, a lot of people have open  
2 lines. Please mute your line unless you have permission to  
3 speak. Okay?

4 MR. MORRISSEY: Thank you, Your Honor.

5 Your Honor, although Voyager's history and actions  
6 are well described in the disclosure statement, when it  
7 comes to information about Binance.US, the disclosure  
8 statement is more of a statement of assurance.

9 The debtors have said that the objectors have not  
10 produced any evidence to counter their assurances about  
11 Binance, but it is not the objectors' obligation to make  
12 disclosures about Binance, it is the debtors' job to do so  
13 and it's a job that the debtors have not done.

14 THE COURT: What should they have said?

15 MR. MORRISSEY: Your Honor, they had a lot of  
16 communications between the debtors on one side, and perhaps  
17 the committee on the same side, and Binance on the other and  
18 they got a lot of assurances from them.

19 Again, I understand that these are restructuring  
20 professionals and not specifically crypto experts, but they  
21 got the assurances from them, including the fact that there  
22 are third parties, independent third parties who have  
23 reviewed the security protocols. But the information they  
24 got from them was walled off from the creditor body because  
25 there was not -- the substance of the information was not in

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1 their restructuring professionals -- were unable to make an  
2 independent determination regarding the security protocols.  
3 They got a showing, they were satisfied with the showing,  
4 obviously, but they didn't make their own determination.

5 And that's why I said, Your Honor, this is more of  
6 a statement of assurances than a disclosure statement and  
7 that's where I think that the debtors fell short.

8 Your Honor, there are other issues that we have,  
9 but, again, I'll defer to other parties and take those on  
10 later, such as releases, exculpations, et cetera.

11 THE COURT: Right.

12 MR. MORRISSEY: Thank you, Your Honor.

13 MR. GOLDBERG: Your Honor, if I may be heard?  
14 Adam Goldberg of Latham & Watkins on behalf of Binance.US.  
15 I'd like to respond quickly to one point that Mr. Morrissey  
16 made about the voting and the questions Your Honor has about  
17 who voted and why.

18 I was doing some math, looking at the voting  
19 declaration, which is at Docket Number 1127, to think about  
20 that, and what it shows is that \$541 million of claimed  
21 value voted in favor of the plan out of the customer class,  
22 which in the disclosure statement is estimated at 1.763  
23 billion. By my math, that's a little over \$9,000 per claim  
24 of the people who voted in favor. There was only 10 million  
25 in claims that voted against the plan and by my math that

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1 the disclosure statement.

2 THE COURT: What information did they get, the  
3 substance of which was not in the disclosure statement?

4 MR. MORRISSEY: They were -- they got assurances,  
5 Your Honor, they got assurances that they had the financial  
6 wherewithal to --

7 THE COURT: That's in the disclosure statement.

8 MR. MORRISSEY: That they did have the  
9 wherewithal?

10 THE COURT: Yeah.

11 MR. MORRISSEY: Yes, it was a -- it was a small  
12 comment.

13 And just to put it in perspective, Your Honor,  
14 Binance itself, there were three pages out of the 98 in the  
15 disclosure statement dedicated to Binance. This plan, Your  
16 Honor, is all about Binance, a lot more than it's about  
17 Voyager. It's all about what Binance can do holding and  
18 protecting the assets on the platform because Voyager, as I  
19 said earlier, is transferring the bulk of the assets to  
20 Binance.

21 One last point, if I may make, about due  
22 diligence, Your Honor. We learned that the debtor's  
23 restructuring professionals had reviewed the information  
24 that they received from Binance, but because they were not  
25 crypto experts, they -- meaning the debtors themselves,

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1 was a little over 5,000 per claim who voted against. The  
2 remaining over 900,000 people who did not vote, the  
3 remaining claims pool, would be about \$1900 per claim.

4 And so what that math shows, Your Honor, is that  
5 the people with the greatest interest in this estate voted  
6 in favor of the plan.

7 And, Your Honor, this plan, my client's goal, the  
8 debtor's goal, as I understand it, is to deliver  
9 cryptocurrency to customers as quickly as possible, and  
10 that's why we believe that the customers voted  
11 overwhelmingly in favor and those with the greatest  
12 interests did so.

13 Thank you, Your Honor.

14 MR. HENDERSHOTT: Your Honor, this is Tracy  
15 Hendershott, pro se creditor, may I approach the podium?

16 THE COURT: In a minute, Mr. Hendershott. We've  
17 got the committee counsel already standing here ready to  
18 argue, so we'll hear the committee counsel first.

19 MR. HENDERSHOTT: Thank you, sir.

20 MR. EVANS: Your Honor, Joseph Evans from  
21 McDermott Will & Emery on behalf of the committee. I'd like  
22 to share a few points and I'll try not to repeat things that  
23 have already been said. We think it's important for the  
24 creditors to know what the committee's role has been and  
25 what we've done in connection with this deal.

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1 The committee supports the plan. According to the  
2 experts, the Binance deal will give customers incremental  
3 value of \$100 million.

4 Based on the substantial diligence that we've done  
5 concerning the Binance deal, the information provided and  
6 the representations made by Binance, the committee supports  
7 a plan which includes the Binance deal and the opportunity  
8 to toggle. We believe that it's the best available option  
9 to get the most crypto back as quickly as possible.

10 One reason why the committee supports the plan is  
11 because of the significant protections that the committee  
12 negotiated for and obtained in the APA. For example, the  
13 Binance.US deal initially contemplated transferring all  
14 Voyager crypto to Binance.US before Voyager creditors  
15 onboarded with Binance.US. This would mean that Voyager  
16 customers' crypto would have been exposed to Binance.US  
17 risks for a period of time before they were able to  
18 withdrawal. The committee refused that deal.

19 The committee negotiated for and Binance agreed to  
20 have customer crypto transferred on a weekly basis only  
21 after customers are onboarded with Binance. So, if they  
22 choose to withdraw and not be Binance customers, the  
23 exposure to Binance will only be for a matter of days.

24 Those provisions are contained in Section 2.4 of  
25 the APA.

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1 that diligence is ongoing.

2 With respect to one important report from Reuters  
3 on February 16th, 2023, we've done diligence and we were  
4 assured that; one, Merit Peak does not withdraw a customer  
5 fee out of crypto; Merit Peak nor any other market maker had  
6 the ability to withdraw a customer fee out of crypto; and  
7 Merit Peak no longer conducts any activity at Binance.US.

8 And we'd like to take a moment to speak about the  
9 SEC's position. With respect to the SEC, the SEC staff  
10 statements on Thursday, Friday, and this morning do not  
11 change the committee's position. We were particularly  
12 unmoved by the SEC staff statement this morning that we are,  
13 quote, "on notice" of some unspecified regulatory violation;  
14 we are not.

15 On Friday, the SEC attempted to clarify its  
16 position with respect to its objection. In its  
17 clarification, they said on four separate occasions that  
18 these were statements of the staff and not the Commission.

19 Why does that matter? Well, for one thing, the  
20 staff cannot bring lawsuits without approval from the  
21 Commission. The staff cannot initiate an administrative  
22 proceeding without Commissioner approval.

23 In a statement from then-Chairman Jay Clayton, he  
24 stated that, quote, "The Commission's long-standing position  
25 is that all staff statements are nonbinding and create no

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1 There are also provisions that we negotiated for  
2 that made clear that when Voyager customer crypto goes to  
3 Binance that Voyager customer crypto remains property of the  
4 estate until the customers have the ability to withdraw.  
5 And there is also the fiduciary out, which has been the  
6 subject of a lot of the testimony, though, before Your  
7 Honor.

8 The second reason why the committee became  
9 comfortable with the Binance deal was because of the  
10 significant amount of due diligence conducted by the  
11 committee, the debtors and their professionals.

12 The committee interviewed Binance.US executives on  
13 these issues on seven separate occasions. And, as this  
14 Court heard from experts from BRG and Moelis, the Binance  
15 deal is the best available deal for creditors. So the  
16 committee supports a plan which includes the Binance deal.

17 There was a number of representations that we've  
18 all heard that were important. The crypto is held on a one-  
19 to-one reserve basis; the company segregates the company's  
20 assets from customer assets; CZ, Binance.Global, anyone  
21 outside of Binance.US cannot take customer crypto out of  
22 Binance.US; and the company does not lend or re-hypothecate  
23 the customer assets.

24 There were also a number of press releases,  
25 Tweets, congressional letters. We've also diligenced those,

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1 enforceable legal rights or obligations of the Commission or  
2 other parties."

3 In short, this statement from the SEC staff about  
4 what they believe is not something that we can meaningfully  
5 consider when weighing against \$100 million of customer  
6 value.

7 The staff stated that the VGX, quote, "has the  
8 attributes of a securities transaction." So even the staff  
9 is not willing to say that VGX is a security.

10 With respect to Binance, they say that Binance.US  
11 is operating as an unregistered securities exchange. Well,  
12 what does that mean? You could be operating an unregistered  
13 securities exchange because one token that you're selling is  
14 a security, there's ten tokens that you're selling as a  
15 security, there's a hundred tokens that you're selling as a  
16 security. We don't know what they're thinking and they're  
17 not willing to tell us.

18 Let's say, for example, they think BUSD stablecoin  
19 is a security. Okay. There was a statement a few weeks ago  
20 from Paxos indicating that they were being investigated for  
21 BUSD. Okay. The committee and its professionals, the  
22 debtors and its professionals, did not consider the Treasury  
23 and BUSD in connection with their valuation of whether  
24 Binance.US can close the deal; they have enough cash in the  
25 bank to do so.

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When you look at the recent actions against crypto exchanges and settlements, on January 19th, the SEC settled charges with Nexo for \$22.5 million; on February 9th, the SEC settled with Kraken for \$30 million. Those amounts, even multiples of those amounts, would not impact Binance.US's ability to close the deal based on the diligence we've performed.

The SEC's stated purpose is to protect investors. The SEC's refusal to take a firm position here stands to harm retail investors. The SEC staff is asking the Court, the UCC, and the debtors to eradicate \$100 million of creditor recovery based on a position that the staff members cannot even get the Commission to support. They are saying we are on notice that there may be a regulatory violation.

From where I sit, the SEC staff statement appears to be designed to intimidate the professionals and the fiduciaries to refuse to go forward with the plan, hoping that we will be afraid of having a decision called into question and we will choose to instead erase over \$100 million of customer recovery. We are not going to do that.

We have had one goal from the outset of this case: get as much crypto back to customers as quickly as possible. The SEC's refusal to take a firm position does not alter that goal. The committee supports the plan.

THE COURT: All right. Thank you.

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attending these meetings at personal sacrifice.

Everyone is in agreement with the Department of Justice and it's unfair to state that if thousands of creditors do not invest the time for every nuance of this trial that he does not speak on our behalf. And I just wanted to call that out to your attention for your consideration.

THE COURT: Okay. Just to make clear, Mr. Hendershott, today there are substantive issues that I -- as to whether the plan complies with the requirements of the Bankruptcy Code and, of course, I'll hear everybody's testimony about that. There's also the issue for the final approval of the disclosure statement and my comments about not having a creditor complaint about the disclosure statement I think reflected the fact that the information that Mr. Morrissey says should have been in that lengthy document, but wasn't, I said I hadn't gotten any complaints from creditors to that effect.

Now, what you just said really is to the effect that creditors shouldn't have to read all of that, but that doesn't really support Mr. Morrissey's objection because what Mr. Morrissey is saying is that you should have read all of it and that there should have been even more in it for you to read, which seems different from what you just said to me.

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Mr. Hendershott, it's your turn.

MR. HENDERSHOTT: Yes, sir, thank you. I just want to tag onto Mr. Morrissey as a representative of DOJ and address comments that you've made, as well as we've heard throughout this entire trial comments from counsel to the debtors-in-possession that by not hearing from a plethora of creditors that means agreement with what is going on.

I understand the counsel for the debtors, they're being paid to advance their agenda and that's why they would promote that false narrative, but I know, Your Honor, I don't believe you have an agenda. And I just want to call out that it's an undue burden, you know, to expect creditors to miss work, you know, spend all of their nights and weekends, you know, reading thousands of documents.

The Department of Justice is the voice of creditors here. Every single objection and motion that the Department of Justice has pushed throughout this trial, starting with trying to object to the KERF, which actually had 2,000 creditors documented as going against it, and that information was held from me, Your Honor, when you specifically asked what is the creditor perspective of that.

They also try to protect us with data privacy ombudsmen. And you've heard the handful of creditors that have sacrificed their work relationships and they're

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MR. HENDERSHOTT: I apologize, sir, if I misspoke, but that was not my intent. I never intended to say creditors should not have read the disclosure statement. I was certainly -- my intent was to call out that I wished more credence of Mr. Morrissey and his department representing and speaking on behalf of the creditors was taken into consideration.

Thank you.

MS. PROVINO: Exactly. This is Lisa Provino, pro se again, I support that last statement. And we are reading the documents, Your Honor, that's why I brought up the deletion of the Stretto documents just for the record.

THE COURT: Okay.

MS. RYAN: Your Honor, this is Ms. Ryan with the Texas Attorney General's Office. We did have a disclosure statement objection and if I may address it now?

THE COURT: Yes.

MS. RYAN: So, in reading the disclosure statement, the information pertinent to customers was not easily laid out for the consumers to see and digest. And one particular segment of the information that was buried is these Alameda claims and what will happen to the customers, the consumers if the debtor is not successful in fighting these claims.

And I don't think any of the creditors objected to

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1 that because they didn't see it, it wasn't there. It was  
2 hard to tease out.

3 And so, in that regard --

4 THE COURT: The information --

5 MS. RYAN: Yes, sir.

6 THE COURT: -- the information about the effect of  
7 the Alameda's claims that you say should have been in the  
8 disclosure statement, you cite that information and it comes  
9 from the disclosure statement. The very information that  
10 you say should have been in the disclosure statement is  
11 information you took from the disclosure statement.

12 MS. RYAN: You're right, Your Honor. My point is  
13 it was buried in this disclosure statement.

14 When we're working with this many consumers -- I  
15 do lots of work for consumer protection in bankruptcy --  
16 generally, we make those things easy to read and easy to  
17 find and in this disclosure statement they just aren't. In  
18 fact, on the page that I would assume most consumers would  
19 look at, there is no reference to the drastic cut of the  
20 returns --

21 THE COURT: I don't --

22 MS. RYAN: -- if Alameda is successful.

23 THE COURT: -- I don't agree with you. You know,  
24 there are so many things that the Bankruptcy Code requires  
25 to be in and practice requires to be in a disclosure

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1 THE COURT: Well, because some of the  
2 distributions will be in the form of cryptocurrencies and  
3 because cryptocurrency values can fluctuate quite widely,  
4 there is no practical ability to be extremely precise in  
5 what people will actually get, but the debtors did offer an  
6 analysis in the liquidation analysis of specifically what  
7 recoveries would be under the financial transactions, what  
8 recoveries would be if they toggled to the other plan, and  
9 what recoveries would be if instead they were to be under  
10 Chapter 7.

11 And they did that, frankly, I think, as precisely  
12 as circumstances permitted. Given the nature of this  
13 business, given the nature of some of the uncertainties, and  
14 given the nature of the assets, I don't know how anybody  
15 could have been any more precise than they were.

16 MS. RYAN: Your Honor, I believe they could have  
17 added one more column that said recoveries if Alameda is  
18 successful, and that would have given an estimated bottom  
19 number and that was not disclosed.

20 THE COURT: But it's in a footnote on the same  
21 page, isn't it?

22 MS. RYAN: Your Honor, it is -- the footnote on  
23 that page does not tell us any type of percentage and it  
24 doesn't actually point to the consumers' claims or  
25 accountholders' claims, it's in a general section at the

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1 statement, and then so many additional things that the  
2 debtor added because of objections and criticisms and  
3 comments that were received in January, that to say that all  
4 of that somehow should have been done in an easily-read-and-  
5 digestible form, you can't do it, you just can't.

6 Disclosure statements necessarily are long; they necessarily  
7 have things in different sections. You can't take  
8 everything that every individual thinks is important and put  
9 it on page 1 because there's 180 pages of things that  
10 everybody would want to be on page 1. You just can't do it.

11 It is in there and I'm not going to say that it  
12 was inadequate just because you don't think it had as much  
13 highlighting or was as easy to find as you think it should  
14 have been.

15 MS. RYAN: Your Honor, I understand your point and  
16 I still object. I do believe that that should have been  
17 highlighted better for the consumers and it wasn't. And I  
18 think an effect of that lack of -- that lack of highlighting  
19 for the consumers is the fact we have no idea of what a  
20 bottom return number would be, it's been quoted in the  
21 disclosure statement as low as 24 percent, it's been quoted  
22 in testimony as high as 48 percent.

23 The consumers have really no understanding of the  
24 bottom of their return and I think the disclosure statement  
25 was also very inadequate in that manner.

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1 top. And so I don't think that it was meaningful for the  
2 accountholders.

3 THE COURT: By the way, I know you were heard when  
4 we considered the initial approval of the disclosure  
5 statement in January, did you raise this issue then?

6 MS. RYAN: Honestly, Your Honor, I don't remember.

7 THE COURT: Okay.

8 MS. PROVINO: What date was that? I can check.  
9 This is Lisa Provino. I wrote notes.

10 THE COURT: In January, I don't remember the date.

11 MR. MORRISSEY: Your Honor, Richard Morrissey for  
12 the U.S. Trustee. Actually, I raised the issue and a  
13 footnote was added, and my questions or comments were very  
14 similar to Ms. Ryan's that they were hidden in -- certain  
15 things were hidden in different parts of the disclosure  
16 statement at the time. I don't remember, however, whether  
17 Ms. Ryan chimed in.

18 THE COURT: But we discussed it and the change we  
19 made is what I approved, right?

20 MR. MORRISSEY: Yes, Your Honor.

21 THE COURT: I don't think anybody complained that  
22 the change we made didn't adequately address the objection.

23 MR. MORRISSEY: Your Honor, there's another aspect  
24 of that as well. The intercompany transfers, the litigation  
25 on that, will also affect possibly the distribution.

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THE COURT: One at a time.

MR. MORRISSEY: Yes.

THE COURT: So, in terms of the Alameda, you know, I vaguely remember some issues coming up and we put this information in specifically to address them, and my understanding is that that took care of the objection and that there -- you know, to say now that it just wasn't highlighted or was in the wrong place, I don't think that's sufficient for me to find that the disclosure statement was inadequate. Okay?

MS. RYAN: Okay, Your Honor. I had one other issue that I wanted to raise now and then when we come to the releases and exculpation issue, I'll save my arguments for then.

Texas does have concerns with the security on Binance's side and we believe that Texas is an unsupported jurisdiction whose customers can't go over to Binance right now. Their personally identifiable information should not be transferred to Binance.

I understand Binance bought the customer list and so information such as emails, so they can market once they are licensed in Texas, that's fine, that should go over, but bank accounts and other personally identifiable information transferring I think is not appropriate in this case.

THE COURT: Okay.

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and, whether it was Binance.US or Binance.com, it was a requirement to be licensed in Texas and they refused to do so.

Likewise, in the documents uploaded to support the Binance due diligence done, no mention of Binance.US's wherewithal is mentioned in there, none. All we have is hearsay testimony or testimony that they relied upon X, Y, Z, and we've never seen X, Y, Z. And so we actually are very concerned with Binance's financials as there's very little to no information in the record about it.

And that's all of my argument for now, Your Honor.

THE COURT: If Binance doesn't have the 20 million or 35 million or whatever it's supposed to pay at closing, then the deal will be done, right?

MS. RYAN: Correct.

THE COURT: So --

MS. RYAN: Well, that --

THE COURT: -- what do we need to --

MS. RYAN: -- my -- Your Honor, my big concern is -- you know, 25 or 30 million, they can probably pay that, I haven't seen any proof that they could -- my concern is, six weeks after the sale closes Binance ends up in bankruptcy and all of the accountholders that transferred over are once again in this same position.

We don't have evidence that Binance won't end up

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MS. RYAN: And then, finally, on the feasibility of the plan, Texas is concerned with the lack of information on Binance's wherewithal. Binance abandoned their Department of Banking license application after a year for failure to give us financial information that was necessary. Binance's documents --

THE COURT: Wasn't that --

MS. RYAN: -- that were just filed --

THE COURT: -- wasn't that a refusal -- in Texas, wasn't that a refusal to give you financial statements of its parent company, isn't that what led to the --

MS. RYAN: Your Honor, I would need to go back and look at the abandonment letter. Regardless, it is a qualification to be licensed in Texas and they would not provide us the information.

THE COURT: But --

MS. RYAN: Secondly, the --

THE COURT: -- as I recall -- as I recall your prior submissions on this point, Binance.US gave you and was willing to answer your questions about its finances, but declined to give you information about the finances of its parent company; right?

MS. RYAN: I again would have to go back and review the documents, but the point is Binance doesn't want to disclose financial information when regulators require it

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in a liquidation like FTX did, Your Honor. We don't have evidence as to their financials --

THE COURT: We don't have any --

MS. RYAN: -- to make sure they won't.

THE COURT: We don't have any evidence that they will, do we?

MS. RYAN: Your Honor, it's the debtor's burden to prove that Binance is -- that it is a good business judgment to sell to Binance and right now I don't see anything that proves Binance isn't going to end up in bankruptcy too because we have no financial information.

THE COURT: But when you say you don't see enough to prove it, you're just saying that you wouldn't make the same judgment. You don't trust --

MS. RYAN: No, I don't --

THE COURT: -- the evidence that the debtors have relied on?

MS. RYAN: No, that's correct because the debtors haven't shown us what they relied on for financial information. They've testified as to hearsay and they've testified that they relied on some documents, which nobody has ever seen except them. And so, no, I don't trust that evidence, Your Honor.

THE COURT: Okay. Anything else --

MS. RYAN: Thank you.

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THE COURT: -- Ms. Ryan?

MS. RYAN: Not at this time, Your Honor. I will reserve some argument for the releases and exculpation provisions. Thank you.

MR. GOLDBERG: Your Honor, Adam Goldberg of Latham & Watkins on behalf of Binance.US, if I may respond to a few points.

First, on the personal information point, we are working on coming back to Your Honor on that issue, but I think, generally speaking, this is a fundamental and core aspect of the deal that is the basis for the economic transaction embedded in the \$20 million purchase price.

On the point of the abandonment of the application as Texas asserts, Binance.US completely disagrees with that characterization. In Binance.US's view, they made every effort to provide financial information that was requested of Texas to them. Texas found that that was not sufficient and deemed the application withdrawn. Binance is working on providing -- on filing a new application, which we expect to be done as soon as possible.

And Binance.US continues to make every effort to work with the State of Texas to resolve its issues to make it -- take it out of the category of being an unsupported jurisdiction, as we have done with Vermont.

On the question of feasibility and Binance's

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for example, is like it says only employees of the company are able to -- this is number 5 -- only employees of the company are able to move or withdraw the customer assets from the company's platform.

So there's that portion about my assets and then I think it's number 8 where they talk about access to my personal identifiable information. It doesn't say anything about whether my assets or my personal information is in the U.S., like is it being, you know, held here in the U.S., or is it being possibly held say like in China or something like that?

So that does concern me that it doesn't say anything like that.

And the other concern that I have is it says, you know, only the company's employees or in the security section it says only the authorized person, but, you know, there are a lot of companies that kind of comingle their employees. So there's nothing in there that says absolutely no one at Binance.com, which is the global (indiscernible) has access to any of my funds or personal information at Binance.US.

So those things I find concerning from a security perspective.

THE COURT: All right. Who wishes to address that objection?

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financial wherewithal to perform the transaction, I think Your Honor has correctly found that the question of feasibility is -- that that is not a question of feasibility in this case; it is a question of the debtor's business judgment. Binance.US provided bank statements to the debtors as the basis for their business judgment. The State of Texas, if they distrusted that information and the debtor's diligence, had every opportunity to conduct discovery on Binance.US and they did not do so.

In our view, the debtor's business judgment is correct in this case because the Binance.US transaction does what we have set out to do from day one of our involvement in this process going back to last year and that is deliver cryptocurrency to customers as quickly as possible.

Thank you, Your Honor.

THE COURT: All right. Anything --

MS. DIRESTA: Your Honor, I'm a pro se creditor, am I allowed to speak to the security issues that have been brought up thus far or do I have to wait for a different time?

THE COURT: Go ahead. Who is this?

MS. DIRESTA: I am Gina DiResta; I'm a pro se creditor. And I read the Binance officer's certificate and one of the things -- or a couple of things that -- let me just go to it -- a couple of the things that they mention,

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MR. GOLDBERG: Your Honor, Adam Goldberg of Latham & Watkins on behalf of Binance.US.

We are -- I think we have provided ample diligence to the debtors on these issues that evidences the security of the information and currency, cryptocurrency that is held by Binance.US. I am working with my client in order to be in a position to respond to the Court directly about where data is held, which would be in accordance with the Binance.US privacy policy, which is available online on the Binance platform.

THE COURT: What does the privacy policy say about where information is held?

MR. GOLDBERG: I'm working on that right now, Your Honor.

THE COURT: Okay.

MR. GOLDBERG: I can understand --

MS. DIRESTA: And I'm sorry, just --

MR. GOLDBERG: -- that that is held in the United States, Your Honor.

THE COURT: Okay.

MS. DIRESTA: What is held in the U.S.? Is it my personal information or also my crypto assets?

MR. GOLDBERG: The response I just received is that I understand personal data is held in the United States. Cryptocurrency is held in the United States and in

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1 Japan. So it's disclosed in the disclosure statement.

2 MS. DIRESTA: And what about, you know, the  
3 terminology of the company's employees and, you know, let's  
4 just use CZ as an example. CZ might be right now an  
5 employee of Binance.com, but who's to say that at some point  
6 he doesn't be considered an employee of Binance.US, and so  
7 then he has access to my stuff. And now, you know, then  
8 Binance.com and Binance.US aren't independent like they  
9 claim they are.

10 THE COURT: Is CZ an employee of Binance.US and  
11 does he have access to transfer customer assets off the  
12 Binance.US platform?

13 MR. GOLDBERG: Your Honor, CZ is the ultimate  
14 beneficial owner in majority of Binance.US, not the  
15 exclusive owner. I can't get into the security protocols in  
16 detail in an open proceeding for security reasons. But my  
17 understanding is that one individual would not be able to  
18 cause the transfer of customer funds off of the U.S.  
19 platform.

20 MS. DIRESTA: But my question isn't how many  
21 individuals can cause a transfer. My question is can  
22 Binance.com employees at some point then be considered  
23 Binance.US employees, and therefore, someone like CZ now has  
24 access to not just my crypto, but my personal information,  
25 when they're supposed to be completely independent.

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1 - 12:42:38). And even if they do go with Binance, they can  
2 pull their crypto off of the platform immediately. The  
3 second that it's distributed and hits their account.

4 MR. GOLDBERG: Your Honor, I would say two things.  
5 One, the officer certificate which has been filed in the  
6 Court, it says that only employees of the company are able  
7 to move or withdraw customer assets from the company's  
8 platform.

9 In addition to Mr. Azman's points, no one is  
10 required to sign up to the Binance.US platform. If they  
11 don't want to be a Binance.US customer, they can have their  
12 crypto liquidated and receive cash.

13 THE COURT: The question was are there employees  
14 of Binance.US who have access to the cryptocurrencies and  
15 the power to move it, who are also officers or employees of  
16 Binance.com?

17 MR. GOLDBERG: Your Honor, my understanding is  
18 that that is not the case.

19 THE COURT: Okay.

20 MR. GOLDBERG: In terms -- I assume Your Honor  
21 meant that there would be officers of Binance.com who could  
22 move assets, I believe you may have misspoken. You said  
23 Binance.US officers.

24 THE COURT: Well, what I meant was, are there  
25 people who do have that power because they are employees of

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1 To me, independent means no employee of  
2 Binance.com ever touches anything to do with Binance.US.

3 MR. GOLDBERG: Your Honor, I can report to the  
4 Court that CZ is not an employee and has no access to  
5 personal information of customers or cryptocurrency of  
6 customers on the Binance.US platform. I think in terms of  
7 the details of the division between Binance.US and  
8 Binance.com, they are separate companies. Binance.com does  
9 not own Binance.US. They are separate legal entities with  
10 separate governance structures. And I think the Debtor's  
11 diligence should suffice to satisfy the statutory  
12 requirements for their business judgment to go forward with  
13 this deal.

14 MS. DIRESTA: But the only person -- the only  
15 employee you addressed is CZ because I gave him as an  
16 example. But what about all of the other employees, that no  
17 Binance.com employees have access to Binance.US assets and  
18 customer information; is that correct? That no employees  
19 whatsoever, not just CZ.

20 MR. AZMAN: Your Honor, Darren Azman for the  
21 committee.

22 While Mr. Goldberg looks for it, I think one thing  
23 to remind the Court, at least as it relates to crypto and  
24 creditors on the phone is, and this is by design, right, the  
25 customers have two options here. They can go (indiscernible

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1 Binance.US, who are also officers or employees of  
2 Binance.com?

3 MR. GOLDBERG: Your Honor, I understand my  
4 client's listening in and reports no.

5 THE COURT: Okay.

6 MR. GOLDBERG: Thank you, Your Honor.

7 MS. DIRESTA: Did I hear him correctly, Your  
8 Honor? He said no employees of Binance.com has access to  
9 anything in -- with Binance.US?

10 THE COURT: I believe that is what he said. He  
11 said that the people who are employees at Binance.US, who  
12 have access to and the ability to transfer cryptocurrency,  
13 are not officers or employees of Binance.com.

14 MR. GOLDBERG: That's correct, Your Honor.

15 MS. DIRESTA: Okay. And then to the point that  
16 the UCC just made about how customers can go to Binance and  
17 immediately remove their assets, I understand that. But my  
18 personal information still ends up with Binance. So I do  
19 still have that concern, regardless of whether I can remove  
20 my assets immediately. And also, what system does  
21 Binance.US share with Binance.com? Because I think the  
22 comingling of systems is not safe and secure. Whether  
23 that's regarding my crypto assets or my personal  
24 information.

25 THE COURT: Well, I'm not sure, you know, we're

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past the evidentiary stage. We're addressing objections that have actually been made. On this particular point, did you make an objection about this? How does this relate to one of the objections that's actually been made?

MS. DIRESTA: Just related to security issues, and that was being talked about right now.

THE COURT: And it's -- you want to know what contract arrangements Binance.com and Binance.US may have?

MS. DIRESTA: What systems do they share? Because it's -- let's say they share a system that then, you know, can make them get access to my crypto or my personal information, you know, even if it's not intentional or inadvertently. I just don't know how secure that is, if they might be sharing systems.

THE COURT: I'll give Binance a chance to give you a quick answer to that, but I think we've strayed -- we have so much to accomplish today in terms of the objections that have actually been filed, and I think that strays into new territory, to tell you the truth.

MR. GOLDBERG: Your Honor, Adam Goldberg of Latham & Watkins on behalf of Binance.US, again.

I think I would make a couple of points. One is, I'll refer to the officer's certificate, which has been filed with the Court that makes clear that the company, that is Binance.US's relationship with Binance.com, is limited to

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customers that elect to receive it in that manner.

THE COURT: Okay.

MR. GOLDBERG: Thank you, Your Honor.

MS. DIRESTA: Your Honor, they just keep bringing up the whole crypto asset portion that I don't have to stay on the platform, but my personal information does stay with them, whether I want to open an account or not. So of course I had security concerns about -- and as you stated in the very beginning of the hearing, why can't they just simply have my email address if they want to market to me? Why do they have to have my bank account, my -- a copy of the photo of my driver's license, my biometric information, and all of those other things.

You know, I'm -- for me, I'm already uncomfortable for them having my email, but now they have all these other things, so they keep saying, well, you know, you can sign up and then immediately remove your assets. That's my asset. But you know what's more important to me is my personal identifying information, especially when identity fraud and hacking is very rampant nowadays. I value that more than thousands of dollars on a platform.

THE COURT: Okay. My understanding is they can't distribute the crypto to you unless you become a customer, and that you can't become a customer without them having to know your customer and other information about you.

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the common ultimate beneficial owner and three commercial agreements that the company previously disclosed to the sellers' advisors. On a professionals' eyes only and confidential basis in connection with the sellers' diligence related to the purchase agreement.

Those matters are confidential, proprietary, and would be harmful to the market insecurity to be disclosed. I would believe that the Debtor's diligence, as well as the committee's diligence, have taken a deep dive on these issues. I think this has become extremely apparent from all of these proceedings. The level of diligence conducted on a buyer of assets in this proceeding has been extraordinary and well beyond the norm.

It is, from my experience, much more than would typically be conducted on a seller of assets. And so I would invite the Debtors and the creditors committee to express any concerns that they have about these issues. I understand their diligence continues to be ongoing, as they have testified, but that they are satisfied at present.

And finally, I would make the point, Your Honor, that if anyone individually feels uncomfortable, no one is required to sign up to Binance.com and have their assets on -- excuse me, Binance.US and have their assets on the Binance.US platform. We are merely making the platform available to achieve distributions of cryptocurrency to

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I also understand from what they've said to day that any customer has the option of telling Binance at any time, not only to close an account but to delete all that customer's personal information.

I can't make it any better than that. I can't order or suggest to Binance that it make distributions to you without know your customer information and anti-money laundering information, because I would probably be directing Binance to do something that's illegal. I can't do that.

MS. DIRESTA: And I understand that. I just, like I said, don't understand why they -- if I do not want to open an account at all, why they can't just keep my email, but leave the rest. And I don't understand why I have to -- because earlier it was stated I would literally have to sign up for a Binance account --

THE COURT: That's an issue --

MS. DIRESTA: -- and then request them to delete it.

THE COURT: That's the same issue that I have raised as to why they need personal information of people who don't want to open accounts. And I think we're still waiting to hear a definitive answer on what we can do about that. Okay?

MS. DIRESTA: Okay. Thank you so much, Your

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Honor, for allowing me to speak.

THE COURT: Okay.

MR. EVANS: Your Honor, Joseph Evans from the committee.

Just one thing. There was a question as to inviting us to talk if we weren't satisfied with the diligence (indiscernible - 12:51:41). I want to make clear that the diligence process continues.

THE COURT: I understand. All right.

It's lunchtime. I think we're going to break until 1:40 for lunch. And then we'll continue the argument. Do we have any relief from the inflexible milestone, which is beginning to look like quite a burden on the Court because I not only have a lot of issues to rule on and a decision to prepare (indiscernible - 12:52:17) but also the extremely lengthy order to go through and mark up.

So do we have any relief from the proposed milestone that that all be done by today?

MR. GOLDBERG: Your Honor, Adam Goldberg of Latham & Watkins on behalf of Binance.US. That question has been asked of our client. We do not have an agreement on extension of the milestone at this time.

Time is of the essence on this transaction.

THE COURT: It may be of the essence, but you know you've got an old man as a judge who can only do so much so

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receive cash distributions on the same timeline as customers in the supported jurisdictions.

Your Honor, New York and Texas allege that the plan unfairly discriminates against account holders in their states by potentially delaying their recoveries relative to account holders in supported jurisdictions and by providing that they will receive their distributions in cash instead of crypto if Binance.US does not get the necessary regulatory approvals.

Your Honor, we took a look at the voting results to see what New York and Texas customers want. And 95.68 percent of Texas customers that voted, voted in favor of the plan and 96.28 percent of New York customers that voted, voted in favor of the plan.

We also confirmed that none of the customers that filed objections are located in New York or Texas based on our most recent contact information that the debtors have for them.

Your Honor, while we're hopeful that we will reach agreements with all the unsupported states, the plan as amended does not unfairly discriminate --

THE COURT: Did you say none of the objectors or none of the negative votes?

MS. OKIKE: None of the objectors based off of our books and records including the ones who had -- did not file

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quickly. So --

MR. GOLDBERG: We're grateful for your attention and efforts, Your Honor, and all the time you've made available for us. We'll be speaking to my client at lunch.

THE COURT: Okay. Please convey to them my strong urging that they extend that milestone until tomorrow.

MR. GOLDBERG: Thank you, Your Honor.

(Recessed at 12:53 p.m.; reconvened at 1:40 p.m.)

THE COURT: Please be seated.

MS. OKIKE: Good afternoon, Your Honor. Christine Okike of Kirkland and Ellis on behalf of the debtors.

Your Honor, we would propose to move next to the unfair discrimination arguments.

THE COURT: Okay.

MS. OKIKE: So, Your Honor, Binance.US and the debtors have had productive conversations with the unsupported jurisdictions to date. As we noted, we've reached a deal with Vermont which will allow customers in that state to receive in kind distributions. And we're committed to continuing to work with the other three states to try to come up with solutions that will allow customers in their states to also receive in kind distributions.

We have also made revisions to the plan to allow customers in unsupported jurisdictions who do not want to sign up for the Binance.US platform to elect not to and to

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objections, but have raised concerns during the hearing are located in New York and Texas. I do recall there was one --

THE COURT: There was somebody --

MS. OKIKE: -- woman --

THE COURT: -- who identified herself as --

MS. OKIKE: -- who identified --

THE COURT: -- from Texas.

MS. OKIKE: -- herself as Texas. We don't have her listed as Texas --

THE COURT: Okay.

MS. OKIKE: -- but she may have moved.

THE COURT: Okay.

MS. OKIKE: So, Your Honor, while we'll hope -- we are hopeful that we will reach agreements with all the unsupported states, we do not believe that the plan unfairly discriminates against account holders in unsupported jurisdictions.

THE COURT: How is that -- what is the deal you reached with Vermont and why is that not good enough for all of the states?

MS. OKIKE: Your Honor, we hope that that deal is good enough for all the states. It was reached very recently. I think we filed it the night before the confirmation hearing. My understanding is that Hawaii is likely to also sign onto that deal. But, unfortunately, New

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1 York did not really engage with us on any constructive  
2 solutions. We have had conversations with Texas that have  
3 been productive, but I think they will require potentially a  
4 more creative solution than Vermont given --

5 THE COURT: The Texas submission, I was a little  
6 befuddled because the Texas submission said, I think, that  
7 other than with respect to stablecoins they don't think you  
8 need any licenses to do what you want to do and that even as  
9 to stablecoins, if I remember right, they thought you could  
10 make the initial distributions. It's just that Binance  
11 couldn't continue to trade them without some --

12 MS. OKIKE: Correct, Your Honor.

13 THE COURT: -- further approvals.

14 MS. OKIKE: And my understanding is that  
15 Binance.US's existing infrastructure does not allow them to  
16 turn off trading for specific coins.

17 THE COURT: I see.

18 MS. OKIKE: So Texas, if -- to the extent we are  
19 able to reach a resolution will require a more creative  
20 solution.

21 MS. WALL: Judge Wiles, this is Jennifer Wall and I was  
22 the one that spoke up last week. I am a resident of Texas.  
23 I have been a resident of Texas for 43 years.

24 THE COURT: Okay. Thank you, Ms. Wall.

25 MS. WALL: Thank you.

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1 permit you to do, isn't that what it is?

2 MS. OKIKE: That's correct, Your Honor. But they  
3 can't have it both ways. They can't ask us to comply with  
4 regulations that don't permit us to make in kind  
5 distributions and also act -- ask for their customers to  
6 receive in kind distributions.

7 THE COURT: Right. As I understand it, the -- now  
8 that you've equalized the ability to get cash distributions,  
9 essentially what you've said is people who want in kind can  
10 get it from Binance and they can get it as soon as they are  
11 able to become Binance customers in compliance with the laws  
12 of the jurisdiction -- the state where they reside.

13 MS. OKIKE: Correct.

14 THE COURT: And in some states that's more of a  
15 problem than in others.

16 MS. OKIKE: Correct.

17 THE COURT: Okay. Is somebody here representing  
18 New York?

19 My --

20 MR. ST. JOHN: Good afternoon, Your Honor.

21 THE COURT: You know, my question for plan  
22 purposes is whether the plan creates a discrimination, but  
23 it sounds to me like the debtors and Binance would be more  
24 than happy to distribute to New York customers exactly the  
25 same way they do everywhere else, and that the only thing

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1 THE COURT: Okay. Go ahead, Ms. Okike.

2 MS. OKIKE: So, Your Honor, our view is that all  
3 account holders regardless of where they reside are going to  
4 have their claims dollarized as of the petition date and are  
5 going to receive the same pro rata recovery based on all  
6 account holder claims.

7 Your Honor, we don't dispute that the ability of  
8 customers in the unsupported jurisdictions to access their  
9 recovery and the form of that recovery may be different from  
10 customers in supported jurisdictions. But any difference in  
11 the outcome for account holders in New York, Texas or any  
12 other unsupported jurisdiction is of the unsupported  
13 jurisdiction's own making.

14 The unsupported jurisdictions can, as the other 47  
15 states have, provide a way for their constituents to receive  
16 distributions in kind. And the fact that they have not does  
17 not mean that the plan unfairly discriminates against  
18 customers in those --

19 THE COURT: Well, that's --

20 MS. OKIKE: -- states.

21 THE COURT: -- putting it a little pejoratively,  
22 isn't it? You make it sound like the jurisdictions are  
23 acting out of spite or laziness or who knows what else.  
24 It's really a question of they have different regulatory  
25 requirements and you can only do what your existing licenses

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1 standing in the way of that is New York's regulations and  
2 the status of licenses in New York state.

3 Why is that an impermissible discrimination by the  
4 plan?

5 MR. ST. JOHN: Good afternoon, Your Honor. Jason  
6 St. John for -- on behalf of the New York State Department  
7 of Financial Services.

8 To answer your question, there are still two  
9 differences between what a New Yorker today or frankly six  
10 months post-closing is going to be able to achieve and the  
11 same account holder in New Jersey or, you know, any of the  
12 other 48 or the other states that are supported  
13 jurisdictions.

14 One, there's still no possibility of, you know,  
15 crypto in kind recovery and, two, to the timeline, the last  
16 possible date for an account holder in the supported  
17 jurisdictions to receive the dollarized value in cash of  
18 their claim is three months post-closing. And for New York,  
19 that date is still six months post-closing even under the  
20 amended plan.

21 We want to note, of course, that, you know, the  
22 amendments that, you know, Your Honor encouraged on Friday  
23 and that the debtors of Binance --

24 THE COURT: It was only -- it's only six months if  
25 there's a New York customer who would prefer to wait and see

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1 if they can become a Binance customer, right?

2 MR. ST. JOHN: Yes, Your Honor. But part of the  
3 basis of our objection is that the option of a in kind  
4 recovery due to, you know, Binance licensure six months  
5 post-closing isn't a realistic scenario. So the option  
6 that's being given to those account holders isn't a  
7 realistic one grounded in fact.

8 You know, we haven't heard anything other than a  
9 -- you know, of statements in the reply memorandum of law  
10 and statements in the plan that they will try for licensure  
11 to show that that is actually a realistic possibility.

12 So the idea of holding off on recovery for New  
13 Yorkers until, you know, possibly six months post-closing  
14 for those who, you know, have perhaps failed to elect to  
15 receive their recovery in cash still prevents an instance of  
16 unfair discrimination in that point. It's not a realistic  
17 option.

18 THE COURT: Well, there's a difference between  
19 saying it's not a realistic option and that it's an unfair  
20 discrimination. Nobody's -- no customer is forced to wait  
21 the six months. They -- if they want their crypto in kind  
22 and want to take their chances on being a Binance customer,  
23 they can make that choice, take their chances whether  
24 Binance gets the approvals or not.

25 But I don't -- I just don't see how this is -- you

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1 Is there any other way to make it equal in the way  
2 that you suggest?

3 MR. ST. JOHN: Well, one, I think, immediate and  
4 relatively easy adjustment would be rather than three months  
5 post-closing being the date by which New Yorkers may elect  
6 to receive cash, as it is with the supported jurisdictions  
7 simply have that be the date in which they will receive a  
8 dollarized value of their claim.

9 THE COURT: Well, but your complaint is about  
10 equal -- by the way, it's phrased as unfair discrimination  
11 which I think as a bankruptcy matter is the wrong term  
12 because I don't need a cram down as to this class. I have  
13 an acceptance by this class. I think your real argument is  
14 whether all members of the class are being treated the same.

15 MR. ST. JOHN: Yes, Your Honor. I apologize.

16 THE COURT: And even that standard is they have to  
17 be treated the same unless they elect otherwise. So if a  
18 New York customer elects not to cash out and to wait to see  
19 if he or she can get crypto currency in kind from Binance,  
20 how does that violate the requirements of the code?

21 MR. ST. JOHN: Right.

22 The difference in timeline is, you know, again, as  
23 we've alleged unequal treatment within a class. The --  
24 while case law certainly does allow, as Your Honor's pointed  
25 out and the debtors pointed out in their reply memorandum of

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1 know, they're trying to do what they can do consistent with  
2 what the regulatory restrictions are. You know, in your  
3 papers you said it's their own fault if they don't already  
4 have the approvals. That doesn't mean that the plan is  
5 creating a discrimination. Maybe it means that the past has  
6 created a discrimination, but it doesn't mean that the plan  
7 is -- we can only deal with the situation as it exists.

8 MR. ST. JOHN: Uh-huh.

9 THE COURT: And I think you would be the first one  
10 to admit that they cannot do in New York right away what  
11 they're proposing to do for Ohio customers.

12 MR. ST. JOHN: That's absolutely correct.

13 THE COURT: I presume you're not suggesting that  
14 we should deny all residents of all other states the right  
15 to get crypto currency distributions.

16 MR. ST. JOHN: Absolutely not, Your Honor. Our  
17 objection is --

18 THE COURT: That's --

19 MR. ST. JOHN: -- focused on New Yorkers.

20 THE COURT: -- the only way I can think of to make  
21 it equal. There's no other way to do it unless we make  
22 everybody wait until whenever the regulatory process drags  
23 out or unless we deny everybody in the country the  
24 opportunity to get something just because New York customers  
25 can't get it.

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1 law, differences in either type of consideration or even  
2 timeline on distribution for reasons, we would allege there  
3 hasn't really been a reason here. The debtors have and  
4 Binance have held out the hope of licensure or negotiation  
5 within that six-month time frame. They -- you know, they  
6 haven't really produced any evidence to show that the idea  
7 or the, you know, perspective being --

8 THE COURT: But, you know, what if they had said  
9 customers in New York have to wait a year and a half. That  
10 would correspond to your regulatory timeline maybe, but it  
11 seems to me that would be worse for New York customers

12 MR. ST. JOHN: We would be making the same  
13 objection, Your Honor, of trying to, you know, get quicker  
14 recovery for New York account holders. But perhaps I'm  
15 missing your point.

16 THE COURT: So you don't want any New York  
17 customers to have the right to wait to see if Binance can  
18 get approval?

19 MR. ST. JOHN: Yes, Your Honor. That's one way of  
20 putting it. We could also perhaps phrase it as, you know,  
21 we don't think that the debtors and Binance have shown  
22 through the plan or the supplemental materials that that's a  
23 realistic option for New York account holders such that --

24 THE COURT: Why can't New York account holders  
25 make that decision for themselves?

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MR. ST. JOHN: Even if they were, Your Honor, it is still an extra three months away from the latest possible account holder in Ohio or New Jersey or a supporting jurisdiction.

THE COURT: But they can -- you know, it's only if they so elect, right?

MR. ST. JOHN: Yes, Your Honor. Although, if I may respond. You know, given the number of creditors who voted on the current plan, there may be reason to suspect that, you know, creditors may not -- may miss a -- you know, an election that's been given to them by the debtors to receive their cash, you know, value and then at that point their recovery would be delayed by --

THE COURT: All right. But it's not --

MR. ST. JOHN: -- three months.

THE COURT: -- unequal treatment under the plan if people pay no attention and fail to take advantage of the rights that they're given. There's only --

MR. ST. JOHN: it is.

THE COURT: There's only so much I can do. You know, when you have this many people involved, is somebody going to sleep on their rights, ignore things, fail to make claims. All kinds of things can happen. There's only so much I can do.

MR. ST. JOHN: Of course, Your Honor.

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THE COURT: Why does this take so long?

MR. ST. JOHN: Your Honor, New York is a pretty strict virtual currency licensing regime.

THE COURT: That just tells me that it takes long.

(Laughter)

THE COURT: Why does it -- what does that mean? What has to be done and why does that take so long?

MR. ST. JOHN: Your Honor, there's a number of requirements that go into virtual, you know, currency licensing regime. You know, showing reserve requirements, of course meeting certain cyber security regulations and showings. You know, as Your Honor likely knows, you know, complying with regulatory requirements can certainly just take a while, which is sometimes at odds with the bankruptcy goal of returning accounts or, you know, or accounts or claims to creditors as quickly as possible.

And so in this case we do have a conflict here. But New York as the licensing entity can simply waive its licensing requirements to allow Binance to make that distribution.

THE COURT: And what about the Vermont solution, why doesn't that work for New York?

MR. ST. JOHN: Of course, Your Honor.

From my understanding, but I will defer to the debtors and to Binance if I misunderstand it, the Vermont

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THE COURT: Right. And so if people have the right to cash out at exactly the same time, that's the feature that worried me because it did seem to be in the parties' control and it did seem to be a difference that I was having trouble thinking of a justification for.

But --

MR. ST. JOHN: And we appreciate the parties reaching, you know --

THE COURT: Yeah. But the --

MR. ST. JOHN: -- an amendment (sic) on that point.

THE COURT: -- ability to -- but they cannot do -- they cannot give crypto, so you're saying that equal treatment would mean cashing them out even if they don't want to be cashed out, even if they would prefer to wait to see if they might still get in kind distributions. How is that the same treatment?

MR. ST. JOHN: Your Honor, again, so we are the licensing entity. You know, as the debtors have pointed out, that's, you know, seemingly, you know, holding up this in kind distribution. And we're objecting on the grounds that we don't think that option or that -- to New Yorkers to wait to see if there will be in kind distributions is one that's grounded in fact or a realistic scenario even six months post-closing.

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solution is a full trading account that limits staking and has a sunset date which is not -- that's essentially granting licensure to Binance for those New York account holders if it allows full trading. That's not a, from our view, a particularly limited account that would or a limited licensure that would be a possible negotiation for us.

Of course, I defer to the debtors and Binance if I've misstated that deal.

THE COURT: I'm sorry.

MR. ST. JOHN: I would defer to the debtors and Binance if I have misunderstood the deal with Vermont.

THE COURT: Well, I think any difference in treatment that results here is the result of regulatory constraints. And the particular differences that you complained about, which is the ability to get crypto currency, is that is -- that would not be solved by the solution that you suggested, which is just forcing everybody to get cashed out in three months whether they want to or not. It seems to me that forcing that decision on everybody actually would create more of a differentiation.

As long as Binance is trying to get licensed in New York, and so long as people in New York would prefer to take their chances and possibly get their crypto in kind, it seems to me that the debtor's proposal actually goes further in the way of kind of providing the same opportunities, as

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1 least as far as they can in light of regulatory constraints.

2 And I don't think your proposed solution is really  
3 an answer. I think your solution would make it worse.

4 MR. ST. JOHN: Okay. Yes, Your Honor. You know,  
5 as our objection noted, you know, the objection was on two  
6 points, both distribution of, you know, crypto in kind and  
7 the timeline. It seems like Your Honor has already answered  
8 the timeline point.

9 On crypto in kind, again, the distribution  
10 couldn't -- you know, right now would not happen through  
11 Binance for regulatory reasons. You know, obviously under  
12 the toggle it would happen through Voyager. It seems as  
13 though, you know, it is still possible for Voyager to  
14 execute the toggle.

15 THE COURT: Well, but if they do the Binance deal,  
16 they will have sold their platform. They won't be able to  
17 do anything. They won't -- they couldn't transfer crypto  
18 anymore than I could, I don't think.

19 MR. ST. JOHN: They would still be effecting  
20 transfers to --

21 THE COURT: Well, probably they could do it better  
22 than I could.

23 (Laughter)

24 THE COURT: I think anybody in the room could  
25 probably do it better than I could, but.

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1 The trading of the stablecoin, the ability to stake, those  
2 things we can't agree to. But if Binance can find a way to  
3 do a withdrawal only account, I think that's something that  
4 we definitely could consider and we will move forward in  
5 these discussions in hopes that we can come to an agreement.

6 THE COURT: Okay.

7 MS. WALL: I will say that from a Texas resident,  
8 that is wonderful news for all the residents in Texas. So  
9 thank you very much for (indiscernible) that.

10 MS. RYAN: Thank you. Absolutely.

11 And if you have any questions, Your Honor, I'm  
12 happy to answer them.

13 THE COURT: No. It sounds like as long as we've  
14 made the cash out option that you understand that there's  
15 only so much that can be done in terms of making crypto  
16 available in kind and that it's not really a bankruptcy  
17 issue at that point.

18 And I -- to the extent you can work it out with  
19 the parties, I encourage you to do so and hope you are able  
20 to do so.

21 MS. RYAN: Thank you, Your Honor. Me, too.

22 THE COURT: All right. Is there anybody else that  
23 wants to be heard on the, what I will call the unequal  
24 treatment or unfair discrimination argument?

25 MR. NEWSOM: Your Honor, this is Dan Newsom, pro

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1 MR. ST. JOHN: Yes, Your Honor.

2 They would still be effecting transfers to  
3 Binance, of course, and we recognize that's a different  
4 scenario than transferring to account holders themselves.

5 THE COURT: Yeah. Okay.

6 MR. ST. JOHN: Thank you, Your Honor.

7 THE COURT: Does Texas have anything in addition  
8 that they want to add on this issue?

9 MS. RYAN: Yes, Your Honor. For the record this  
10 is Abigail Ryan with the Office of the Texas Attorney  
11 General on behalf of the State Securities Board and the  
12 Texas Department of Banking.

13 I was happy to see the change that our citizens  
14 can get a cash out option as early as three months to be  
15 aligned with supported jurisdictions' account holders that  
16 choose not to go to Binance. I think that makes it a more  
17 fair plan in that regard.

18 And while we would love to see our citizens get  
19 their crypto back, at this point due to the set up of our  
20 regulatory (indiscernible) here in Texas, that's not an  
21 option.

22 However, we have been in conversations with  
23 Binance and the debtors and we are looking to do some sort  
24 of an agreement like Vermont, but as Ms. Okike said, it will  
25 have to be a little different based upon our rules here.

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1 se creditor. I did file an objection as it relates to the  
2 plan for VGX, specifically Section 1123(a)(4) in terms of  
3 unequal treatment for VGX account holders.

4 THE COURT: Yeah. I saw your objection, but I was  
5 having a little trouble understanding just what you think is  
6 unequal about the treatment.

7 MR. NEWSOM: Well, I would be happy to expound on  
8 that, Your Honor.

9 I believe -- first it's important to state that in  
10 the event that the smart contract is not sold, it's  
11 important for Your Honor to understand that VGX has no  
12 underlying technology or utilities, and in the event that  
13 it's not sold, even the treasury statement states that VGX  
14 may decline in value and may have no value post confirmation  
15 of the plan.

16 So as it relates to discriminatory treatment, I  
17 bought VGX prior to petition date. I bought a crypto  
18 currency that had utility, had value from the described  
19 organization which by their accounts had a straight road  
20 trajectory.

21 Following the petition, in the event that the  
22 smart contract is not sold, I would be receiving something  
23 in kind that is not what I bought prior to petition where  
24 other creditors in the same class are going to get back  
25 their pro rata share of crypto currency that not

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1 fundamentally changed.

2 So in terms of opportunity for recovery, I believe  
3 that in the event that the smart contract is not sold, the  
4 VGX account holders would be discriminated against unfairly.

5 THE COURT: What are the smart contracts and how  
6 did they tie in with VGX, and would you say it's otherwise  
7 -- otherwise there's no underlying contract?

8 Ms. Okike, can you explain all that to me in terms  
9 a fourth grader would understand?

10 MS. OKIKE: Sure.

11 Your Honor, so my understanding is that the smart  
12 contracts determine the utility of the token, so the value  
13 of the token. And different entities could use the smart  
14 contracts to generate utility for the token.

15 We are not selling the smart contracts (sic) in  
16 connection with the Binance.US transaction. Binance.US has  
17 agreed to submit VGX for listing, to go through the process  
18 of listing the token on the exchange. It's not currently  
19 listed. And we are actively marketing the smart contracts  
20 that underlie the token.

21 Our hope is that we are able to sell the smart  
22 contracts to a third party which will allow the token to  
23 continue to have utility going forward.

24 Your Honor, in our view VGX is no different than  
25 other tokens that don't have utility like Bitcoin or

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1 token VGX is what's called an ERC20 token. That means that  
2 it's traded on the Thorium blockchain, like many other  
3 tokens, but it has its own smart contract that governs how  
4 transactions will work and what the token can be used for.

5 There's a little bit of a difference between  
6 utility and smart contract. Utility is what the token is  
7 used for, meaning can I buy things with it, can I pay  
8 transaction fees with it, can I use it to join a group, for  
9 example.

10 But the smart contract is the technical software  
11 that permits it to work. And so what's being marketed is  
12 the sale of that smart contract so a third party can use,  
13 possibly withdraw the smart contract and initiate a new one  
14 to allow for other usages of VGX.

15 THE COURT: Okay. Thank you.

16 And if nobody buys the smart contract, how could  
17 anybody use VGX?

18 MR. EVANS: Well, the smart contract is public.  
19 It's out in the world. And so VGX can still be traded and  
20 used. It's just -- there will be no entity behind it really  
21 making improvements or trying to figure out how to use it in  
22 a meaningful way.

23 And so I think what the concern is, is that  
24 without any entity really using and promoting the VGX smart  
25 contract, the value of VGX will decline and the amount of

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1 Dogecoin, and the value will fluctuate depending on a number  
2 of different factors. And from our perspective we don't  
3 believe that there's unequal treatment with respect to VGX  
4 because --

5 THE COURT: VGX is on a blockchain transfer of the  
6 same kind of ways that either Bitcoin or other --

7 MS. OKIKE: Correct.

8 THE COURT: Okay. So it may not be as attractive  
9 to people as Bitcoin, but it's just another coin in that  
10 respect.

11 But these smart contracts that -- what exactly are  
12 they and how do they support or generate value to VGX?

13 MS. OKIKE: Your Honor, I may need to ask Mr.  
14 Tishner (phonetic) to help on the technical aspects with  
15 respect to that.

16 MR. AZMAN: Your Honor, if you would like Mr.  
17 Evans can probably provide us the technical information --

18 THE COURT: That's fine.

19 MR. AZMAN: -- rather than calling a witness.

20 MR. EVANS: Joseph Evans, McDermott Will & Emery  
21 on behalf of the committee.

22 Your Honor, each token has a smart contract. That  
23 smart contract dictates how a token will work. And so what  
24 the token is worth, if there are any rewards for staking the  
25 token, for example, but as a technical underpinning for each

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1 entities actually using it for something other than  
2 speculation would decline.

3 THE COURT: Do all crypto currencies have backing  
4 of that kind and smart contracts of that kind?

5 MR. EVANS: Yes.

6 THE COURT: So Bitcoin, for example?

7 MR. EVANS: Well, Bitcoin is a separate  
8 blockchain, so Bitcoin is a blockchain that only -- that the  
9 Bitcoin token is on. Ethereum, for example, is another  
10 blockchain and there are a variety of other tokens that are  
11 offshoots of the Ethereum blockchain. Those are called  
12 ERC20 compliant. Those each have their own smart contracts.

13 THE COURT: Okay. I'm pretty sure I would not  
14 pass a test on this subject, but I think I understand.

15 (Laughter)

16 MR. EVANS: Thank you, Your Honor.

17 MR. AZMAN: Your Honor, I think what you're -- you  
18 were getting at just now is that the risk of the VGX token  
19 potentially not being worth anything is a risk that you  
20 might have with any other token that's being distributed  
21 such that if Bitcoin were to collapse tomorrow, you could  
22 potentially make the same argument.

23 But I don't think that that is unfair or  
24 discriminatory treatment.

25 THE COURT: Well, I think in fairness to the

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objection, what he's saying is VGX may have a much higher chance of cratering than Bitcoin does.

Is that essentially what you're saying?

MR. NEWSOM: Thank you, Your Honor.

I would actually go further to state that VGX uniquely is singularly impacted by the actions or inactions of the debtors. And (indiscernible) that VGX has (indiscernible) utility in the event that its smart contract is not sold to an entity other than speculation is very misleading, Your Honor. No one's going to be able to sell VGX as -- or use it as a currency, use it in any way. It's literally just an ERC20 branch -- excuse me -- branch chain (sic).

What -- you can -- anybody can just create a chain off of the ERC20 token and the smart contract allows VGX to be (indiscernible) into infinity. That precipitates the drop in value even further.

So I -- there's really, really no value for VGX other than (indiscernible) speculation -- I'm sorry -- I said (indiscernible) in the court, Your Honor, but that's what this might become. And the chance that it has any value at all if the debtors do not smell the smart contract is nearly guaranteed.

THE COURT: And what is the solution that you suggest? Are you saying that --

THE COURT: Right.

Well, I'm not sure how as a practical matter it would be possible for the debtors to do the re-balancings and calculations that they would need to do if they were going to give people a sort of coin by coin decision-making opportunity as to whether as to that particular coin they wanted cash or the coin. I just -- what I do understand about this, it seems to me that the task would be just about impossible.

MR. NEWSOM: Your Honor, I do think that it would probably be an undue burden to a lot of the, you know, the individual choices or cryptos to be liquidated either in cash or in kind. That probably would become plus. However, Voyager is -- or the VGX token is unique in that Voyager actually has direct control over its stake. And in the event that it does not take the necessary steps (indiscernible) smart contract, they are in -- they are materially impacting the opportunity for recovery of VGX account holders.

Further complicating the matter, Your Honor, is that Voyager holds in my estimation somewhere in 35 million plus of their own VGX tokens. And if they go to liquidate that on the open market, that further drops the price of the token and therefore the opportunity of recovery for creditors.

MR. NEWSOM: The specific relief for -- I'm sorry. Go ahead.

THE COURT: Yeah. Are you saying the debtor shouldn't distribute VGX to people who had it?

MR. NEWSOM: I'm saying that in the event that they don't smell the smart contract, they've admitted that they remain hopeful that they can. However, I think that the FTC's unique statements from the last couple of days' hearings might add additional barriers to that.

But in the event that they don't smell the smart contract, that they allow VGX holders to -- or I guess rather they liquidate the VGX position and distribute it in UFC (sic) rather than giving it to them in kind so then have to work with (indiscernible) digital code and instead receive their pro rata share of UFC at the same algorithm that all the other second class creditors are receiving.

THE COURT: Of course, you and other holders of VGX, if you don't want VGX, have the right to just get cash for all your cryptocurrencies. You just don't have the right to kind of do that on a coin by coin basis, right?

MR. NEWSOM: That is correct. If I -- I had multiple positions, Your Honor, but I did have a large VGX position. And if I wanted to take all of those positions in cash, I would have to take all of them in cash, not just VGX.

There's a lot that Voyager can't control about the outcome of the recovery for creditor. And I think it is unique and deserves a special carveout in the disclosure statement and the plan in the event that they don't sell the smart contract. They have a responsibility to the creditors (indiscernible).

THE COURT: What's the debtor's response?

MS. OKIKE: Your Honor, from the debtor's perspective, I agree with -- and, apologies, I don't remember the gentleman's name. I agree that the debtor's --

THE COURT: It's Mr. Newsom.

MS. OKIKE: Mr. Newsom.

I agree with Mr. Newsom that the debtors do have more control with respect to VGX just given that it's a token obviously that is issued by Voyager. We have every intention of doing what we can to make sure that there is utility going forward. But the reality is, is that we are either consummating a sale transaction or a liquidating transaction and winding down.

And so while the plan provides for all account holders to receive the same recovery, same pro rata recovery based off of values of the tokens at a particular point in time, there is the risk of, you know, a material decrease in value of VGX to the extent that there is no utility going forward. And we acknowledge that. I'm not sure what the

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1 solution is. I think from our perspective we do still  
2 believe that creditors are being treated equally because  
3 we're determining the value at a specific point in time.  
4 Customers are receiving distributions. They're able to cash  
5 them out immediately if they so choose.

6 THE COURT: When customers get in kind  
7 distributions, if I had VGX in my account, am I going to get  
8 more VGX than I ever held in the past or --

9 MS. OKIKE: No.

10 THE COURT: Okay. So it's not like my entire --  
11 I'm going to be a poor customer who gets an entire  
12 distribution in the form of VGX or anything like that.

13 MS. OKIKE: No.

14 THE COURT: Okay. Unless V --

15 MS. OKIKE: And so what we are doing --

16 THE COURT: Unless VGX is the only thing that I  
17 ever owned.

18 MS. OKIKE: Correct.

19 What we are doing in the rebalancing is making  
20 sure that people get their pro rata recoveries in the same  
21 form.

22 THE COURT: Does anybody have any idea of how  
23 likely it is that VGX will continue to have value? I mean,  
24 I -- somebody -- I asked somebody the other day what the  
25 current value is and they told me and I forget, but it was

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1 MS. OKIKE: -- the same --

2 MR. NEWSOM: Excuse me.

3 MS. OKIKE: I'm sorry.

4 MR. NEWSOM: I'm sorry. Go ahead.

5 MS. OKIKE: No. No. go ahead.

6 MR. NEWSOM: I was just saying that I think we can  
7 reasonably assume that it's risen in price because of the  
8 speculative nature of in the event the smart contract sold.  
9 Also, the elements that (indiscernible) more is locked up  
10 and you can move the price easily and therefore manipulate  
11 the market to make money off of (indiscernible) trading.

12 I think that those elements will not exist going  
13 forward post-consummation of the deal and the failure to  
14 sell the smart contract.

15 MR. AZMAN: Your Honor, Darren Azman for the  
16 committee.

17 Just a practical thought. And I think what the  
18 gentleman on the phone is suggesting that he would like to  
19 have happen is for the estate to liquidate VGX and  
20 distribute cash. I think that's what I'm hearing.

21 But if the estate were to do that, that in and of  
22 itself would have the same effect on the price of VGX. It  
23 would probably crater. So whether the VGX is liquidated in  
24 the hands of customers immediately after they receive it or  
25 whether it is liquidated today, it's --

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1 relatively low.

2 MS. OKIKE: I think it was 30, 36 cents, 33 cents.  
3 We can check. I believe it was in the 30 cents.

4 But, Your Honor --

5 MR. NEWSOM: Your Honor, it's currently 39 cents,  
6 but I -- it is important to understand that the majority of  
7 the (indiscernible) is locked up on the platform and that  
8 number can be manipulated, I suppose, easily by market  
9 forces.

10 Furthermore, my cost average was close to \$2.00.  
11 And so, I mean, I -- it's -- I mean, 39 cents is relative to  
12 the average cost of VGX to take on a (indiscernible)  
13 position, but I don't think that we can clearly state that  
14 because VGX has increased in value since we filed the  
15 petition that it will continue to do so. In fact, if we  
16 remove the smart contract -- or don't sell the smart  
17 contract, there's no value. It's (indiscernible) a  
18 guarantee that it goes to zero and the opportunity for  
19 recovery is essentially lost, zero.

20 MS. OKIKE: Your Honor, I think the reality is we  
21 just don't know. Everyone knows Voyager is in bankruptcy  
22 and VGX has been rising. So there's no real explanation for  
23 why VGX is rising, but it has. And I don't think we know  
24 how it will trade post-closing. And I think that's --

25 MR. NEWSOM: I think we can read --

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1 THE COURT: I think as I understand the objection  
2 it's not that so much. It's that Mr. Newsom thinks that the  
3 current market value for VGX is much more elusory than the  
4 current market value for other coins, and that treating it  
5 as an item that actually has a value of 39 cents as of the  
6 date of distribution is unrealistic and has the effect of  
7 reducing his recovery because there's, unlike other coins,  
8 there's much greater risk that the real value of VGX is  
9 zero.

10 I think that's -- does that correctly sum up your  
11 objection, Mr. Newsom?

12 MR. NEWSOM: Yes, Your Honor. That's a pretty  
13 fair characterization.

14 MR. AZMAN: I'm not sure how we fix that.

15 MS. OKIKE: Your Honor, but just to -- further  
16 counterargument, I mean, if we are able to sell the utility,  
17 the smart contracts underlying the token, and the value  
18 rises, I mean --

19 THE COURT: He might get more.

20 MS. OKIKE: Exactly.

21 THE COURT: Right.

22 MR. NEWSOM: And to be clear, I'm not asking that  
23 the debtors do not continue to pursue the sale of the smart  
24 contract. I do think it is more unlikely since the FTC has  
25 stated that some of their staff believe it has elements of

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the security streams action.

However, I remain hopeful that the ultimate buyer would be a high quality buyer that intends to comply with all regulatory (indiscernible). But I think that's probably unlikely, and hope is not a strategy here and where we fail to do that we are materially impacted.

I would state that the difference between liquidating as part of the estate and distributing (indiscernible) pro rata share in cash to VGX account holders is different than giving them in kind VGX distributions and then allowing them to sell it on the open market. I do think that's -- it -- I think it's -- it needed to be pointed out to Mr. Azman's point that there is a difference in those two things.

THE COURT: But assuming we can't give customers the right to make a coin by coin election, because I just don't think that would be practical, what other solution do we have, Mr. Newsom? You most certainly, and everybody else, have the right to take cash instead of any cryptocurrencies. I'm not sure that there's any intermediate approach that is practical.

Do you -- what is it you see --

MR. NEWSOM: It would need -- I'm sorry.

THE COURT: Go ahead. What would you suggest?

MR. NEWSOM: Well, do we need a coin by coin

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you hold at the moment?

MR. SLADE: No.

THE COURT: Okay.

Is it fair to say it is a relatively small component of the total value that will be distributed?

MR. NEWSOM: Your Honor, I believe 30 percent of accounts held some amount of VGX. I believe it's the third largest holding on the platform.

THE COURT: Well, that's different in terms of, you know, measuring the value of what's being distributed.

MS. OKIKE: I would say it's relatively small compared to the overall value of the portfolio.

THE COURT: The problem, Mr. Newsom, is it seems to me you yourself would not want the debtors to just give up on VGX. You kind of want them to, I don't know what, wait, see if they can sell the smart contract before they distribute VGX. I'm not sure we have that option at the moment, to tell you the truth.

So what are we supposed to do?

MR. NEWSOM: I think that's part of the problem, Your Honor, is that we don't know the fate of VGX. We don't know that Binance.US is in (indiscernible). We don't know that they'll sell the smart contracts. We think -- I think personally that it's probably unlikely given the FTC's statements.

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solution here or should we just specifically carve out these -- well, let me rephrase that.

Should we amend the disclosure statement and the plan which is already singled out for VGX. It would just be more thorough or thoughtful, rather, in the event that the smart contract is not sold and a plan as a result of that. VGX is already singled out in the plan and the disclosure statement. I'm just asking that we be a little bit more thorough and thoughtful about how that opportunity for recovery is more equal to those VGX account holders.

THE COURT: Given the amount of VGX the debtor holds at that current market price, what does that translate to in terms of value?

MR. NEWSOM: I believe it's between 10 and 20 million based off of Mr. Tishner's testimony and that's probably in line with what I believe they had in 35 million to 40 million tokens (indiscernible) in the estate. But I -- correct me if I'm wrong.

THE COURT: And we have some people scurrying around the room getting an answer to the question, so.

MR. SLADE: Your Honor, I apologize. Mike Slade for the debtors.

If we disclose the information it's going to move the market. That's the concern.

THE COURT: Oh, you -- it's not public how much

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So I think in the event that the smart contract is not sold, since VGX already has its specific clause carved out for it and what happens to it, we amend that clause to ensure protection and (indiscernible) treatment for those VGX account holders.

If the value of the estate is relative -- if it's relatively small in terms of dollarized value to the estate, I don't think there's a large impact on the creditor body at large. It seems like a simple thing to ask and it would ensure protection while also allowing the debtors to continue to pursue the sale of the smart contract. I think -- it sounds simple to me, and if I'm wrong please correct me, but I think the ask is simple and the solution is simple.

THE COURT: I'm not sure the solution is that simple. You know, if the debtors hold VGX until they see if they sell the smart contract, the prices may change. The debtors will have allocated things to other customers. They won't necessarily have the ability to make up the difference. These are all calculations that have to be done at one time to make sure that the value is based on the date of calculation or at least equal. That's what the bankruptcy code commands.

So I'm not sure we can hold VGX aside without making it impossible to do the all -- do all of the

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calculations.

MR. NEWSOM: That's a fair point, Your Honor. And I think that we should consider that we've had nine months to sell the smart contract and we have yet to do it, and I do think the FTC adds a wrinkle to it now. And so perhaps putting a time frame on which steps should be done, and in the event that it's not done say in the next three or four weeks, whenever the pro rata calculations are determined, we make the decision to liquidate VGX at the USD value pro rata share equal to (indiscernible) class creditors.

THE COURT: Is there any time frame for the sale of the smart contract?

MS. OKIKE: Your Honor, we have some parties that are interested. They've been meeting with the company and the creditors' committee as well. But we haven't made an actual determination as to a specific buyer.

THE COURT: Okay. But is it fair to say that it's not a hopeless prospect for VGX? There's some people who are at least indicating interest in buying the contract?

MS. OKIKE: That's correct, Your Honor.

We have some holders of VGX who are interested in providing utility for the token going forward and have offered various solutions.

THE COURT: I see.

Does that change your feeling, Mr. Newsom?

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whether there is equal treatment as whether the calculations are skewed and, therefore, the recoveries are actually different because the VGX value might be elusory.

And I don't think anybody's suggesting that it actually is elusory, certainly not at its current value of 39 cents, or that it is necessarily going to be elusory, just that it might turn out to be elusory.

But the value is already fairly low. It seems to reflect the fact that people don't know just what utility it's going to have. And I don't think I have enough evidence in front of me to say that it is worthless to the point of being inappropriate to be taken into account as an item of distributive value.

And nor do I have enough reason to believe that it's so hopeless that I should kind of require it to just be excluded from the entire set of calculations. And I don't know how to do the kind of in between that you're suggesting without making the calculations of the plan impossible.

So unless somebody has a better mathematical solution for me than I'm thinking of, I just don't think what you want, Mr. Newsom, is something that I can grant.

MR. NEWSOM: Your Honor, I certainly respect your decision. But I will state that I think that if we were to ask the debtors or the professionals if they were to receive their salary in VGX based off the current plans or future --

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MR. NEWSOM: I think it's the same simply because it -- we have no confirmation that that will indeed happen. And I would wonder if these individuals that are interested in purchasing the smart contract and providing utility for VGX, are they aware of the FTC statements in the last two days that VGX has elements of a securities transaction. I think that's a barrier there.

MS. OKIKE: I think, Your Honor, the only alternative would be to sell all of the VGX at the time that we do the distribution and, you know, have those dollars be distributed in exchange.

THE COURT: And how would all the other customers who at the moment aren't expecting that as part of the plan, how would they feel about that?

MS. OKIKE: That's why -- I mean, I don't think it's necessarily a viable solution. I don't know if we could do it on a customer by customer basis. It seems overly burdensome.

THE COURT: Okay. Is there anybody else who would like to be heard on this question?

Okay. Technically, as a matter of equal treatment, the VGX coin is being treated just like all the other coins and the amount that holders will receive is being calculated in exactly the same manner.

I think the real objection here is not so much

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likely future, they would all quickly refuse. I think that there's a high likelihood that this is elusory. It's not a guarantee.

THE COURT: Okay.

MR. MENDELL: Your Honor --

THE COURT: Yes.

MR. MENDELL: -- this is Marshall Mendell, pro se creditor. I just want to add that I am a very large VGX holder, maybe the largest, and so this is a position which is very important to me as it is to Mr. Newsom and many other creditors who I know personally who also have large stakes in VGX.

And I'm wondering if it's possible to please ask the debtor what is the hold up in securing the transaction if we've already had a couple of transactions with FTX and Binance that were kind of put together. But it appears that a utility for the VGX token is taking longer.

MS. OKIKE: Your Honor, I think at the time that we were negotiating the various transactions, there was a question as to, at least in the first transaction, whether FTX was going to acquire VGX. We did not want to proceed with selling obviously the smart contracts given that it might have been included in the sale.

With respect to Binance, again, we're hopeful that the token is withstood on the exchange.

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1 That being said, until the sale transaction is  
2 approved, we weren't really seeking to sell off piecemeal  
3 assets. So, you know, we are working towards this, but I  
4 will confess it hasn't been, you know, the primary focus  
5 just given the larger transaction that we were, you know,  
6 diligently trying to execute.

7 THE COURT: Historically, what did VGX trade at?

8 MS. OKIKE: So the all time high was \$12.54.

9 (Pause)

10 MS. OKIKE: 24 cents as of the petition date.

11 THE COURT: Don't I have to assume that the 39  
12 cent market value is the market's calculation of the  
13 likelihoods here and the option value, I suppose, associated  
14 with VGX?

15 You know, there are options that sell that based  
16 on current market conditions are way out of the money, but  
17 they have value. For heaven's sake, even companies that  
18 have announced bankruptcy, sometimes their stock still sells  
19 for a price when it's hard to see any realistic likelihood  
20 that the stock will have any value, but it's option value.

21 And we distribute options sometimes in bankruptcy that  
22 are way out of the money, but they're deemed to be items of  
23 value precisely for that reason, because there's a chance  
24 that they may come into value.

25 So I guess unless you have evidence that the 39

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1 -- on our Voyager app we have a particular maximum recovery.

2 MS. OKIKE: I don't think it's the maximum  
3 recovery. I think you're seeing your claim dollarized as of  
4 the petition date based off of the price as of the petition  
5 date.

6 MR. MENDELL: Yes. You're right. Thank you for  
7 clarifying.

8 So can you please answer, is there a minimum  
9 recovery for VGX holders on each token, please?

10 MS. OKIKE: No. There's not a minimum account --  
11 sorry -- there's not a minimum amount. It will depend on a  
12 number of factors, but we anticipate, you know, a 48 percent  
13 to potentially in the 70 percent recovery on account of, you  
14 know, the claims that you have against the company,  
15 including VGX.

16 THE COURT: So the way the calculations work, the  
17 dollar amount of your claim is based on the dollar value of  
18 your account as of the petition date.

19 Everybody will get the same percentage of that  
20 dollar amount in either cash or crypto currencies. But  
21 people -- in terms of which crypto currencies they get, that  
22 will -- there will be some effort to match that to what your  
23 prior holdings were so that hopefully there will be fewer  
24 tax consequences, though no guarantee that that will be the  
25 case. So --

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1 cents is not a fair calculation of the option value of the  
2 VGX, I'm not really in a position to say that giving that  
3 kind of value to VGX would be unfair to the people who are  
4 going to receive VGX.

5 MR. MENDELL: Your Honor, I have a secondary  
6 question.

7 Is 22 cents or whatever the buyout number, is that  
8 a worst case scenario for our recovery on VGX, please?

9 THE COURT: 22 cents? I don't know what you meant  
10 by 22 cents.

11 MR. MENDELL: I think that that might be the  
12 number of the Chapter 11 date back to, what is it, June 5th  
13 or July 1st, something like that --

14 THE COURT: Oh --

15 MR. MENDELL: -- the --

16 THE COURT: The testimony --

17 MR. MENDELL: -- (indiscernible) --

18 THE COURT: The testimony based on the current or  
19 based on last Wednesday or Thursday's values, I thought that  
20 the testimony was that the minimum recovery would be in the  
21 40-something range with an upside up to maybe 73 or so if  
22 things go right on various contingencies.

23 Did I remember that right?

24 MR. MENDELL: Your Honor, I think that's the -- I  
25 think that may have to do with market value, but there is a

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1 MR. MENDELL: And if that applies to VGX, that  
2 would be somewhat satisfactory to me given all things  
3 considered. So I think that would be good.

4 THE COURT: Yeah. What it would mean as to VGX  
5 would be, you know, if you had a \$10,000 allowed claim as of  
6 the petition date and if the initial distribution was going  
7 to be 40 cents, just to make the math easier in my head, you  
8 would get a package of things that has a value as of the  
9 calculation date of 40 cents. Some of that would be made up  
10 of VGX based on whatever VGX's price was as of that date.  
11 Some of that might be made up of other coins if you held  
12 other coins.

13 Is that fair, Ms. Okike?

14 MS. OKIKE: Correct.

15 THE COURT: Okay.

16 MR. MENDELL: Thank you. Thank you very much,  
17 Your Honor, for the clarification.

18 I have nothing --

19 MR. NEWSOM: Your Honor --

20 MR. MENDELL: -- further.

21 MR. NEWSOM: -- I'm sorry to spend so much time  
22 here. I know we're all very busy. But I would like to go  
23 back to your point with regards to proof to the elusory  
24 value of VGX currently.

25 It is hard to state since the debtors have refused

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1 to reveal their position on VGX how much of VGX tokens are  
2 currently locked up and what the remainder is available on  
3 the open market.

4 But suffice it to say that it is a very low  
5 percentage of the overall available tokens and, as such, the  
6 trade -- the token can be manipulated easily. And we know  
7 with several efforts from anonymous groups on social media  
8 sites or otherwise that have attempted to pump the VGX  
9 price. They've even pumped it up to 92 cents and there is  
10 some residual value left as people have been sort of left in  
11 the wake of the pump and dump scheme.

12 So I -- Your Honor, there's multiple factors here  
13 that are currently holding the value of VGX and none of them  
14 would remain in place in the event that the smart contract  
15 is not sold.

16 THE COURT: What evidence do I have of that? See,  
17 that's the problem. I don't have evidence. I have rumors  
18 or suspicions, but I don't have evidence.

19 MR. NEWSOM: I have to admit, Your Honor, in my  
20 lack of legal experience I did not frame the argument in  
21 terms of the value being elusory, but instead equitable.  
22 And I did not think it would be necessary to go down this  
23 route because it seems to me that the debtors are aware,  
24 given their disclosure statement, that the value of VGX may  
25 have no value for its consummation if the smart contract is

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1 received something other than what I originally bought in  
2 return.

3 That is what's happening here, Your Honor. I am  
4 not receiving back what I bought in return in the event that  
5 the VGX smart contract is not sold. I believe that there  
6 are elements of this plan that are discriminatory based on  
7 opportunities for recovery, whereas -- and this is important  
8 -- other coin type actual utility have the ability to be  
9 traded, sold -- I'm sorry -- used as a currency. VGX will  
10 have none of that. And all of the value that is ascribed to  
11 it right now is speculative in nature.

12 And when we flood the market with the VGX tokens,  
13 it will only go to zero. I don't believe there is any  
14 chance whatsoever for the value of VGX to go up beyond what  
15 it is at today in the event the smart contract is not sold  
16 and the market is flooded with the number of coins held on  
17 the Voyager platform.

18 THE COURT: Okay. All right.

19 Thank you, Mr. Newsom.

20 Is there anybody else who wants to be heard on  
21 unequal treatment or unfair discrimination objections?

22 Okay.

23 MS. OKIKE: Okay, Your Honor. I think we'll move  
24 to the liquidation analysis next.

25 THE COURT: Why don't we do the releases?

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1 not sold.

2 That by itself seems like indiscriminatory  
3 treatment --

4 THE COURT: It may --

5 MR. NEWSOM: -- in the event -- in terms of  
6 (indiscernible) recovery.

7 THE COURT: It may have no value. We usually  
8 think of things that have some reported market value as the  
9 market reflecting what their value is. It's what willing  
10 people are willing to transact at.

11 What you've now said to me is that based on  
12 trading volumes or perhaps people's desire to manipulate the  
13 price, maybe that market is not a true market, but is  
14 manipulated. But that's something that I would need  
15 evidence to reach that conclusion and I don't have any. So  
16 much of this --

17 MR. NEWSOM: I would be happy to provide it, but I  
18 don't know how much time we have. But --

19 THE COURT: Well, we've already closed the  
20 evidentiary record.

21 MR. NEWSOM: I'll make one final plea, Your Honor,  
22 and then defer to your good judgment.

23 In Mr. Tishner's testimony he stated this. He  
24 said, if I were an eTrade customer and I bought shares in GE  
25 and eTrade got into trouble, then I would be upset if I

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1 MS. OKIKE: Releases?

2 THE COURT: While I have the energy for it.

3 MS. OKIKE: Sorry.

4 THE COURT: While I have the energy for it.

5 MS. OKIKE: Okay. Great.

6 (Laughter)

7 MS. OKIKE: Okay. So, Your Honor, we had a number  
8 of objections to the third party release. As a threshold  
9 matter, the plan does not propose a non-consensual third  
10 party release. Any third party's direct claims against non-  
11 debtors, to the extent such direct claims exist, are not  
12 released unless such third party affirmatively consents,  
13 which would be reflected in opting into the third party  
14 release that was included on the ballots and in the notices  
15 of non-voting status.

16 Your Honor, holders of claims in interest could  
17 also affirmatively elect to contribute their direct claims  
18 against third parties unaffiliated with the debtors to the  
19 extent they have any to the winddown debtor, and the  
20 winddown debtor will be vested with authority to pursue  
21 those claims.

22 Your Honor, we did have a number of parties who  
23 chose to affirmatively consent to the third party release  
24 and to contribute their direct claims to the winddown  
25 debtor.

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Specifically, 65 percent or 40,112 claimants in the voting classes opted into the third party release, and 85 percent or 726 of claimants in the non-voting classes opted into the third party release.

52 percent or 31,878 claimants in the voting classes chose to contribute their direct claims to the winddown debtor, and 90 percent or 765 credits in the non-voting classes contributed their claims to the winddown debtor.

Your Honor, courts routinely approve consensual third party releases to be included in a plan. Here, again, the release is entirely consensual. We have not imposed a release on holders of claims that voted in favor of the plan. And so we believe that the third party release, to the extent that a creditor affirmatively opted in should be approved.

THE COURT: All right. I -- it seemed to me from a lot of the objections that there was a misunderstanding of who the releasing parties would be and the extent to which creditors and regulatory bodies, governmental entities were having releases of their own claims hoisted (sic) on them, that certainly is an issue that is a hot issue in many bankruptcy cases. But it's not really one here. There are no non-consensual third party releases here.

So as to the releases being granted by non-debtors

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The debtors have their own claims. We'll get to that in a minute because the debtors have proposed to release their claims, and that may be of concern to people who have derivative interests and the value of the debtor's claims. But in terms of claims that belong directly to third parties, nobody is being enforced to release anything. They're just volunteering. And there was disclosure as to who the people would be who would benefit from that release and a certain number of people have elected to go ahead and provide it.

MS. DAGNOLI: Okay. I'm sorry. Then I was going to speak on not having liability releases for the executors, and that's not what you're speaking about. So I'm sorry.

THE COURT: Yeah. Just to be clear, if a customer has elected to grant the proposed release, then that customer's claim against those executives has been voluntarily released.

But the theory of the Bankruptcy Code is, you know, that's something that was asked and granted consensually by that particular creditor. That creditor can make up his or her own mind as to whether to grant that release or not and elected to do it.

I, quite frankly, would have no authority to tell them no, that they can't. The case law in the Second Circuit is quite clear that creditors can consent to

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here, is there anybody who still has an objection that they need me to consider?

MS. DAGNOLI: Judge --

THE COURT: Yes.

MS. DAGNOLI: This is Lisa Dagnoli. I just want to understand what you're saying.

Are you saying the third party releases include the executives of Voyager and the CEO or we're not speaking about that?

THE COURT: Well, you mean as beneficiaries of the releases?

MS. DAGNOLI: I don't really know the difference, I'm just going to be honest.

THE COURT: In any release, there is a person who grants the release and there's a person in whose favor the release is granted.

MS. DAGNOLI: So the important point here is that the only people granting releases, other than the debtors themselves of the debtor's own claims, the only people granting releases are people who have voluntarily agreed to do so. Nobody's being forced to do so.

So if you, for example, Ms. Dagnoli, owned a direct, personal claim against Mr. Ehrlich, there is nothing in what we're doing today that would purport to release that claim or terminate that claim.

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releases and, in fact, here the debtors are much more narrow than has been approved in other cases. In many other cases, simply voting in favor of the plan is deemed to be a consent to the releases.

We don't have that here. People who voted for the plan are not deemed to have consent to releases unless they separately and explicitly and affirmatively opted into them. So they are about as voluntary --

MS. DAGNOLI: Okay.

THE COURT: They're about as voluntary here as they could be.

MS. DAGNOLI: Okay. I just wanted to go on the record to say that I don't want to have any releases of liability for fraud or, you know, negligence or anything like that for the executives of Voyager or the CEO. And I don't know where that would be put in, but that's what I wanted to say.

Thank you, sir.

THE COURT: Okay. Well --

MR. NEWSOM: Your Honor, this is --

THE COURT: -- to the extent --

MR. NEWSOM: -- Dan Newsom, pro se --

THE COURT: -- to the extent --

MR. NEWSOM: -- creditor again --

THE COURT: -- to the extent, Ms. Dagnoli, that

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1 you're objecting to somebody else giving up their direct  
2 claim of fraud against Mr. Ehrlich, I'm not sure you have  
3 standing to object to that. They've done it. They've  
4 agreed to it. They made their own decision. It's not my  
5 job or yours or anybody else's to tell them they shouldn't  
6 have done it or that they can't do it. They've done it.

7 You certainly are entitled to be heard on whether  
8 the debtors can or should release their own claims, but to  
9 the extent, you know, somebody -- an account holder had a  
10 claim or a shareholder had a claim of fraud and elected to  
11 release it, well, that's what they're entitled to do. If  
12 they don't want to pursue it, they don't have to. Okay.

13 MR. NEWSOM: Your Honor, this is Dan Newsom. This  
14 is also in one of my specific requests for relief.

15 I would say -- and, again, I want to be brief out  
16 of respect for time. I would say this, and I do understand  
17 the difference between my direct claim as a creditor and  
18 whether I opted in or not.

19 But as it relates to the releases of the estate,  
20 they are overly broad. The investigation by the special  
21 committee and the UCC's counsel were limited in scope.  
22 They've admitted that they focused primarily around the  
23 details of the (indiscernible). They did not investigate  
24 the concerns raised by the FTC for, you know, misleading  
25 fraudulent or (indiscernible) false claims, FDIC for

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1 THE COURT: Yeah.

2 MS. DIRESTA: Yeah, Your Honor. It's Gina DiResta  
3 again, pro se creditor.

4 One of the problems I have with the releases --  
5 and I agree with you. I do not care how anybody votes on  
6 the release. That is every individual's choice.

7 But what I do care about is that people understand what  
8 they're voting on. And the verbiage in that third party  
9 release is so confusing that even I, with my 15 years of  
10 legal experience and drafting 70 documents and contracts,  
11 when I first read that release, I literally was like, wait,  
12 what, and I had to read it multiple times slowly to really  
13 understand what I was doing.

14 And other people in -- within the Voyager investor  
15 community, because I am very active online and having talked  
16 with a lot of different people or reading a lot of comments  
17 that are out there, so many people said they did not  
18 understand what they read. They were confused. They didn't  
19 know how to vote.

20 There are people who literally voted and then  
21 would get in like Twitter spaces or would message on social  
22 media and say, hey, I checked off that box, that means I'm  
23 saying -- I'm agreeing to getting my claims, right, that  
24 means I'm going to get my money back. Like they -- like so  
25 many people have different interpretations of the verbiage

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1 fraudulent claims. They did not investigate securities  
2 fraud. They did not examine third parties that the estate  
3 may have viable claims against that are currently being  
4 released under the plan, such as (indiscernible), for  
5 example, and out of an arrangement to produce an equities  
6 platform that they did not follow through with. In fact, in  
7 this own bankruptcy proceeding (indiscernible) platform was  
8 in its infancy stage and Voyager routinely touted that as  
9 something that was coming soon, as early as the first half  
10 of 2022 or second half of 2022.

11 My point being they're releasing valuable claims  
12 from the estate where we might have derivative claims, but  
13 they could be more successfully pursued by the estate. And  
14 I think they don't see any reason for it. It's not  
15 necessary to effectuate the transaction, and we've been  
16 given no consideration or the estate's been given no  
17 consideration (indiscernible) creditors.

18 THE COURT: Okay.

19 MR. NEWSOM: I don't think they belong.

20 THE COURT: Just before we -- we'll come back to  
21 that in a second, but I just want to see if there's anybody  
22 else who wants to be heard on the releases by third parties  
23 by people other than the debtors and the estate.

24 Is there anybody else who wants to be heard?

25 MS. DIRESTA: Hi, Your Honor.

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1 of that release that to say that all 65 percent of people  
2 who voted for it obviously agree with it. There's a lot of  
3 people who didn't even understand what they're voting for.

4 And I think that was like one of the biggest  
5 issues that I found from people and it's -- I mean, they  
6 were like, I don't know what I'm voting for. And then for  
7 them to, well, accidentally (indiscernible), I checked the  
8 box. I didn't know what I was doing.

9 The secondary problem is they did not even know  
10 that they could change their vote. The UCC has never made  
11 it clear to creditors that they actually had the option of  
12 changing their votes by simply going through the voting  
13 process all over again. So a lot of people felt stuck.  
14 They're like, oops, oh, well, kind of an attitude. And they  
15 literally like wrote that online or verbally said that in  
16 these Twitter spaces.

17 So that's the thing that I would like to argue is  
18 I feel like the verbiage was confusing and kind of  
19 deceptive, and people really didn't understand what they  
20 were voting for.

21 THE COURT: Well, under the bankruptcy rules when  
22 a release is being sought, it's got to be highlighted. And  
23 somebody remember me -- remind me what the rule number is.  
24 I -- does it require that you quote the provision  
25 specifically?

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MS. OKIKE: I think it has to be bolded and highlighted.

(Pause)

THE COURT: I think it's Rule 3016(c) as to injunctions, but isn't there a similar provision as to release?

Well, in any event, the ballots that were approved here and the description of the releases were the subject of motions that were considered in January. And they were approved by me after people had a chance to be heard as to whether they were sufficient or not. They are in line with the same kinds of information and same kinds of texts that we've given to people in other cases.

You know, there's a constant push and pull in bankruptcy between, on the one hand people will say it's not simple enough and in plain English I can't understand it, and then on the other hand if you try to do something in simple and plain English you get complaints that you haven't been clear enough as to the full details.

We can't do it both ways. And so we try to make sure that the full information is there so that people can see it. If anybody thought that they were doing anything other than granting a release, I'm not sure how they could have been confused unless they simply didn't read because it says, you're granting a release. It says you don't have to.

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to what the independent committee had actually looked at. Rather, just the very terms of the release suggest that somebody sat down and tried to make it as indisputably broad and all encompassing as was humanly possible.

It would appear to cover preference claims, for example, so that customers who weren't employees would be subject to preference claims, but committee members and employees would not, even if they had made similar withdrawals from their accounts. And in terms of whether there's justification of that, I didn't hear a peep of evidence to support it.

So how can I, based on the record that I have, how can I support the breadth of the releases that you've proposed?

MS. OKIKE: Your Honor, may I confer with our co-counsel for one moment?

(Pause)

MR. GOLDBERG: Your Honor, pardon me for interrupting.

THE COURT: Yes.

MR. GOLDBERG: May I be excused to continue discussions with my client about the issues we've --

THE COURT: Yes. Please --

MR. GOLDBERG: Thank you.

THE COURT: -- go ahead.

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You're doing it voluntarily, but you're granting a release.

So I'm not going to back and say that this whole process has to stop and is no good because of the way the releases were presented. I think they were presented fairly.

Okay. So I think we should move onto the releases by the debtors. And, you know, there's some validity to what Mr. Newsom has just said. You've proposed very broad releases and at least one specific settlement in the form of the deal with the -- Mr. Psaropoulos and Mr. Ehrlich.

But the testimony by Mr. Pohl was that his committee looked at potential claims against insiders, not even being very clear about who that was.

I know that the debtors in their statement of financial affairs defined insiders as people who had actual authority over the disposition of assets of the debtor, which means a relatively narrow group. And yet you've proposed very broad releases as to professional persons, all persons who were employed by the debtors during the course of the case. These are releases that would go beyond insiders as I read them. It would cover members of the creditors' committee who certainly are not debtor insiders as that term is used.

The description of the claims that are being released are -- I detected no effort to kind of confine it

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(Pause)

THE COURT: We'll break for ten minutes while you have your discussions. Okay.

(Recessed at 3:06 p.m.; reconvened at 3:23 p.m.)

THE COURT: Okay. Are we ready to continue?

MR. KIRPALANI: Yes, Your Honor, thank you. For the record Susheel Kirpalani from Quinn Emmanuel Urquhart & Sullivan on behalf of the special committee of the debtors, Voyager LLC to be precise.

Judge, I want to tell you what we did do as well as what I understood Mr. Pohl's testimony to be about insiders. Mr. Pohl didn't equate his definition of insiders with anything in the statement of financial affairs definition that determine insiders under the Bankruptcy Code, which is how he meant it and used it, is directors and officers.

And I can tell you what we did do, and I can also give you some comfort on the direct -- on the scope of the released parties under Section 136 of the plan, definition 136 of the plan.

First just to get it out of the way, the reference to committee members being released from preference liability, that's not how the plan works. The defined term released parties means, and I'm quoting from it, collectively in each case in its capacity as such, and then

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1 it refers to the committee and each of the members thereof.

2 So a member of a committee, his capacity as such  
3 is incapable of receiving preference, because all of that  
4 activity happened post-petition. So just to give customers  
5 comfort, nobody who sat on the creditor's committee is in  
6 the release of potential preference liability. If there was  
7 any (indiscernible) committee.

8 We did not look at potential exposure of committee  
9 members because we on behalf of the special committee we're  
10 not releasing them. It's not true that the only focus of  
11 the special committee's work was to look at the 3AC loan.  
12 We did look at the statements that were made to the FDIC.  
13 We did look at the statements that were made to customers  
14 generally and press releases that were made generally and  
15 Mr. Pohl did explain that in his testimony.

16 But those do not give rise to causes of action in  
17 favor of the debtor. If the debtor had misled the  
18 customers, in order to obtain more assets to grow the  
19 business, that does not create a cause of action that the  
20 debtor has against the officer or director for pursuing that  
21 strategy.

22 It may give rise to a cause of action in favor of  
23 a customer who received, for example, a text message from  
24 Mr. Ehrlich or an equity holder who received a text message  
25 or an e-mail from Mr. Ehrlich, of course, we're not

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1 in the Bankruptcy Code does a look back period of one year,  
2 not 90 days and we did look at withdrawals of crypto assets  
3 off the platform beyond 90 days up to one year.

4 There were a handful of withdrawals beyond the 90  
5 day period, but those same individuals also put more assets  
6 on the platform during the 90 day period, did not give any -  
7 - give rise to any suggestion of any impropriety or  
8 favoritism or they knew something the market didn't.

9 At the time of those withdrawals the market  
10 capitalization for Voyager was over \$700 million. And so  
11 the notion that the estate should expend funds to try to get  
12 what would have amounted to \$500,000 worth of transfers, to  
13 try to prove insolvency during the period in the end of  
14 March and early April, that is beyond the 90 day period with  
15 that, but within the one year period just seems cost  
16 prohibitive and not a wise use of resources. And so that's  
17 the rationale why directors and officers --

18 THE COURT: Why can't the plan administrator make  
19 that decision? What do you need a release for? If it's  
20 just a question of whether a claim is worth pursuing and not  
21 something you're getting any consideration for, why are you  
22 granting the release?

23 MR. KIRPALANI: Well, it is the business judgment  
24 of the special committee to grant the releases that were  
25 proposed in the plan and --

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1 releasing that. That belongs to those individuals and we  
2 take that very seriously.

3 With respect to the preferences that have been  
4 mentioned on behalf of directors and officers we did look at  
5 transfers made to directors and officers. They're detailed  
6 in the statement of financial affairs. And we did note  
7 there were two bonus payments. We looked into them, they  
8 were not preferential, they were ordinary course of  
9 business, but we still got a reversal of Mr. Ehrlich's bonus  
10 as part of the consideration for the overall settlement.

11 THE COURT: But the schedules listing payments to  
12 insiders only listed dollar payments and not account  
13 withdrawals.

14 MR. KIRPALANI: Thank you, Your Honor, I'm coming  
15 to that.

16 THE COURT: Whereas it seems quite clear from the  
17 position the debtor has taken about who owned the property  
18 that account withdrawals are preferences or might be  
19 preferences anyway.

20 MR. KIRPALANI: That's true, Your Honor, and we  
21 did look at potential preference liability of directors and  
22 officers for withdrawing their crypto assets off the  
23 platform. There were no such withdrawals within the 90 days  
24 prior to bankruptcy.

25 Now, of course, we know that insiders as defined

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1 THE COURT: And my question is why.

2 MR. KIRPALANI: These individuals served post  
3 bankruptcy, I want to be very clear about that, Your Honor.  
4 There is no director or officer or employee, for that  
5 matter, that's getting a release that didn't serve the  
6 estates post bankruptcy.

7 There are directors and officers that were not  
8 part of this organization on the commencement of Chapter 11,  
9 they are not getting releases. They are not defined as a  
10 released party.

11 And when this company filed part and parcel of  
12 encouraging folks to stay aboard, work with the debtors,  
13 maximize value for customers, was that releases were going  
14 to be proposed and if they were appropriate, meaning that  
15 there was no wrong doing or no viable causes of action  
16 against them, then it would be set up for both by creditors  
17 to see if that plan was confirmable and if it was approved.

18 THE COURT: I have no evidence of that.

19 MR. KIRPALANI: You don't have evidence that the  
20 plan was sent up for --

21 THE COURT: No, I have no evidence that these  
22 employees were told that releases would be sought in  
23 exchange for their continued service. I have zero evidence  
24 of that.

25 MR. KIRPALANI: Mr. Renzi (ph), I believe in his

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1 declaration --

2 THE COURT: I also don't have any disclosure to  
3 anybody of just what potential claims are being given up in  
4 exchange for that, just what withdrawals they might have  
5 made. I have conclusory remarks about it today, I have  
6 nothing. I have a suggestion that releasing them from  
7 preference claims that have never been described were  
8 somehow part of the deal about which I have no evidence.

9 MR. KIRPALANI: I believe Mr. Renzi (ph) testified  
10 of the importance of the employee base for this organization  
11 and for keeping this sale process together. And that is in  
12 his declaration and it was part of his live testimony as  
13 well.

14 I don't -- I think you're correct, Your Honor,  
15 that there was no specific mention by Mr. Renzi or Mr. Pohl  
16 or Mr. Tiffner (ph) that employee X was told, if you stick  
17 around, you know, it'll be worth it because we'll be able to  
18 obtain global peace from this bankruptcy in exchange for  
19 your hard work and your efforts, but I think it is --

20 THE COURT: What about the scope of the release,  
21 which seems, you know? The release has provisions in it  
22 like anything that you ever did that has any bearing on any  
23 claim that anybody ever had against the debtor you're  
24 released from. Your investigation didn't go that far,  
25 right?

1 judgment made here was, let's free the employees. I don't  
2 see any investigation of the full amount of claims for which  
3 people are supposed to be getting releases, it's just not  
4 there.

5 MR. KIRPALANI: And we did look at the directors  
6 and officers, Your Honor.

7 THE COURT: Yeah, I understand.

8 MR. KIRPALANI: Respectfully --

9 THE COURT: That's a different matter. You did  
10 look at the directors and officers. I don't know that I can  
11 free them from preference claims because I don't have any  
12 information about that, but I know you did look at the 3AC  
13 loans, but let's just stick with the other releases.

14 I just -- you know, if I'd had some evidence maybe  
15 it would've come out differently, but I just don't have it.  
16 I think we have to carve them back. That's not to say that  
17 the plan administrator has to sue these people for  
18 preferences, for example. The plan administrator can decide  
19 whether it makes sense or not. But I certainly don't have  
20 evidence that would allow me to say that it is so clearly  
21 without sense, that it should just be released.

22 MR. KIRPALANI: I understand, Your Honor.

23 THE COURT: Okay.

24 MR. KIRPALANI: Do you want me to continue with my  
25 argument about the directors and officers' releases?

1 MR. KIRPALANI: That's true, Your Honor.

2 THE COURT: So why give a release of that breadth?  
3 Seems like a gift, a throwaway. Somebody decided we're  
4 going to make this as broad as possible, kind of untethered  
5 by any actual investigation or review that had been done.

6 MR. KIRPALANI: I can't stand here before you and  
7 tell you that we looked at every employee and what they did  
8 to everybody in every way, but over the course of --

9 THE COURT: That's literally, if you read through  
10 the release, I mean, I'm not sure I've ever read a release  
11 that has as many terms as this one, to kind of try to round  
12 out the corners of just how the broad release is. And  
13 there's no way, I don't care how broad your charter was,  
14 there's no way you could have investigated all of those  
15 things.

16 And certainly, in terms of evidence that these are  
17 reasonable, that they're actual claims, or that there's been  
18 actual consideration by the company of the risks and rewards  
19 or pursuing claims on these things, no, there isn't.  
20 There's just an effort to make the releases as broad as  
21 possible, that's not enough.

22 I'm supposed to -- I may be required to some  
23 extent to defer to the company's judgment as long as it's  
24 reasonable, and so long as the other standards make sense,  
25 but implies that a judgment has been made. And the only

1 THE COURT: Go ahead, yes.

2 MR. KIRPALANI: So as Your Honor just covered I  
3 believe with Ms. Okike, there is no -- I want to talk for a  
4 moment what's not being released, to try to alleviate any  
5 kind of tension that may exist.

6 There are no non-consensual third party releases.  
7 Customers, creditors and regulators will retain their rights  
8 to sue under they have permanently opted in to releases of  
9 their own. Their rights to sue people, if any, exist are  
10 not impaired by the settlement and by the releases by the  
11 estate on the plan.

12 And I wanted to emphasize that, because Mr. Pohl  
13 last week was asked questions by customers that really  
14 related to non-estate claims, including some of the things I  
15 mentioned earlier about statements made to the market,  
16 statements made to securities holders, statements made to  
17 customers through e-mails, through text messages, through  
18 press releases.

19 To the extent, anyone has a direct cause of action  
20 and I'm not saying they do, to the extent that they do  
21 against individuals, those claims are not released. To the  
22 extent they have claims against the debtor, those claims are  
23 not released except as part of the discharge and release  
24 that will be receiving a dividend pursuant to the plan.

25 Second, the estate that I mentioned, is not

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releasing former officers, former directors, or former employees, who did not serve the Chapter 11 estate at all.

Third, the estate is not releasing Mr. Ehrlich or Mr. Psaropoulos from the breach of fiduciary duty of care claims relating to their decision to make the 3AC loans. The issue is one of recourse but not on releasing the claim itself.

As Mr. Pohl testified, the special committee determined after a comprehensive investigation that was done hand in hand with the statutory creditor's committee that these breach of fiduciary duty claims are colorable, cognizable and they should be released.

Fourth, the estate is not releasing Alameda or the insurance company that received millions of dollars on the eve of bankruptcy or any other third parties for anything. All of those claims are being retained pursuant to Section 1123(b)(3) of the Bankruptcy Code by the plan administrator and will be prosecuted or not based on that individual's cost benefit analysis.

So while we determined that the estate may have cognizable claims against Mr. Ehrlich and Mr. Psaropoulos, the special committee decided in their business judgment acting independent of any connection whatsoever with the board members, the officers being investigated, counsel for the debtors, to pursue a settlement with respect to these

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them have indemnity obligations from the company. All of them were exculpated and indemnified pursuant to the operating agreement of the company.

And the sea suite (ph) level managers even had separate indemnification agreements from the company that would become more general unsecured claims. As well as the fact that all of those individuals would also tap into the D&O insurance, which is what we desperately are trying to preserve.

And we're happy that today there's still the full \$20 million of coverage available for the plan administrative to attempt to negotiate at least a decent settlement from, if not fully litigated against the carrier and the individuals, Mr. Psaropoulos and Mr. Ehrlich because they are the ones where the buck stopped. They were the ones who had potential liability.

THE COURT: Who was in the officer and director group that you looked at besides Mr. Ehrlich and Mr. Psaropoulos?

MR. KIRPALANI: All of them. The chairman, Mr. Philip Atan (ph), Ryan Wooley (ph), I remember because I remember he's specifically not a director or an officer, but he's a senior member of management, might be considered an insider.

Dave Brosgol, general counsel, Gerard Hanshe as

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individuals personally assets.

THE COURT: So as to Mr. Ehrlich and Mr. Psaropoulos, did I pronounce that correctly?

MR. KIRPALANI: Yep.

THE COURT: You've proposed an actual settlement that includes a release and I do understand if you want to settle claims against a party it's often part of the discussion that there be a release. But you've preserved certain claims as to the insurance and 3AC, but you've released all others against not only Mr. Ehrlich and Mr. Psaropoulos, but all other officers and directors, not as part of a settlement with them or any demonstrable or identified consideration from them, but just a release.

MR. KIRPALANI: The demonstrative -- the demonstrated consideration was to prevent dissipation of the potential distributions of other customers by having indemnification claims filed by those officers and directors for frivolous claims that would have been brought.

There was concerted effort and investigation into all of the directors and officers in connection not just with the 3AC loan, but in potential with all of the historical transactions, at least of a magnitude that requires spending time to look into them, as well as press releases, messaging by the company, et cetera, to see are there any claims against these individuals. Because all of

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well, just going off my memory. Let me take a closer look here. Ashwin Prithipaul, the chief financial officer, Marshall Jensen, Pam Kramer (ph), Stephen Ehrlich I mentioned already and Evan Psaropoulos I mentioned already.

Misha Milani (ph) -- one second, Your Honor. Yeah, Mr. Slater (ph) reminds me it were the individuals that were interviewed, the 12 individuals that were interviewed, who we interviewed for any potential wrongdoing and they were all disclosed in the disclosure statement by name.

THE COURT: Okay.

MR. KIRPALANI: So as I was saying, Your Honor, the special committee decided to pursue potential settlement discussions with Mr. Ehrlich and Mr. Psaropoulos in the hope that we could accomplish a few goals. First, get whatever personal assets are liquid and get it all from these individuals, that we can get consensually.

Assuming it was a sizeable chunk from what otherwise we could collect, it might be worth pursuing that. That was goal number one.

Goal number two, minimize or get the waiver of claims by those individuals against the estate because that's currency that they could trade, that they could get. And third, preserve the D&O coverage to the extent possible and specifically with respect to that bizarre eve of

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bankruptcy side A policy, could we get them to agree not to look to that policy, until after the plan administrative has had its day in court or a conference room to negotiate with the D&O carriers, and we got that too, Your Honor.

So the -- all three of those goals were met by the special committee. Significant to Mr. Pohl's analysis was that there was no evidence of self dealing, in connection with making the loans to 3AC. These officers would have been entitled or would be entitled to business judgment -- the business judgment rule shield of liability.

Also, as Mr. Pohl mentioned, Voyager Digital's operating agreement gave these individuals broad exculpation and they enjoyed broad indemnification rights that were provided by separate contracts with the debtors.

Mr. Pohl testified in his rule book they didn't conduct sufficient due diligence on making the 3AC loans. But if the special committee pursued litigation, he explained that we would need to prove that the acts and omissions were not just negligent, but they were grossly negligent and there was no evidence of willful misconduct.

Could they have been grossly negligent? Potentially, yes, potentially. There is a gray area between willful misconduct -- I'm sorry, between gross negligence and negligence. But what we've determined and what Mr. Pohl testified is that both of these men had a keen interest in

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actually been weighed. You offered me the evidence and I understand what the company standards are and the limits of my authority as to what I can do as to that. And I really want to set that settlement aside and just make sure that the rest of the releases make sense.

As to the other members of the trove who you've interviewed, you said that the reason for the releases that it prevents a frivolous depletion by the assertion of claims that might be subject to indemnity. Well, but these are the debtor's claims. So who's going to make a frivolous assertion of claims on behalf of the debtors?

MR. KIRPALANI: Well, I mean the charge for the special committee was to determine whether there are any non-frivolous claims to be brought. So they made that determination and determined that there are no non-frivolous things that could be brought, and so therefore, the releases of those individuals is --

THE COURT: But I think we've also made clear that you did not and could not possibly have looked into claims relating to all of the kinds of things that are covered by that release.

MR. KIRPALANI: We looked at the -- obviously the 3AC loan was a primary focus as Mr. Pohl testified and it was. It is the reason this company wound up in bankruptcy. As for disclosure to customers, dealings with the FDIC,

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the success of Voyager. If Voyager did well, they did well. If Voyager failed, so too would their careers and their personal investments kept on the platform, as well as their equity investments.

Even if a plaintiff could prove that their acts and omissions were grossly negligent, the plaintiff would still need to prove that it's that gross negligence that caused the losses to the estate, when by all acts and by all indications and as Mr. Pohl testified, his view, the estate was defrauded by 3AC and its founders.

And even if the plaintiff could surpass those hurdles and obtain the judgment against those individuals, after undoubtedly incurring significant costs and expenses, Mr. Ehrlich and Mr. Psaropoulos simply did not have the personal assets that satisfied any significant judgment.

And Mr. Pohl testified that we did look at their (indiscernible) assets and the states in which they lived to see are these community property estates and they are not.

So after doing all that, we still weren't prepared to let them walk for nothing, so we decided --

THE COURT: No, I understand the case as to the settlement with Mr. Ehrlich and Mr. Psaropoulos and I understand that that's the one that's going to bother some of the customers the most, but I do understand that it has been looked at, it has actually been considered, it has

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dealings with regulators, we did look at all of those as well, as to whether the estate, the company would have a cause of action against its own officer, its own director under the terms of the operating agreement, there's no such claim for those types of conduct.

THE COURT: Okay. Let me say that as to the proposed settlement with Mr. Ehrlich and Mr. Psaropoulos, the standards that I am obligated to apply are for me to assess whether it is in the range of reasonableness, based on likelihood of success, possibility of recovery, et cetera, I do think that the evidence that you have given me which while the conclusion has been disagreed with, the actual evidence has not been controverted.

I think that supports the settlement and I'm sure that's going to be an enormous disappointment to many of the account holders on the phone, but I think that the evidence is going to compel me to that conclusion.

I'm much less convinced, the scope of the releases as to the other insiders and certainly not at all convinced as to the scope of the releases as to people who may not have even been the subject of your investigation. Let me hear from the U.S. Trustee because they had objections on this point.

MR. KIRPALANI: Thank you.

THE COURT: Thank you.

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MR. MORRISSEY: Thank you, Your Honor, good afternoon. Richard Morrissey for the U.S. Trustee.

Just so it's clear, Your Honor is talking about debtor releases, they're all third party releases, they cover --

THE COURT: Third party releases were voluntary, they cover what they cover. I'm not undoing any of those.

MR. MORRISSEY: Okay. Your Honor, the releases in the Chapter 11 cases can be brought, but there's a limit as to how broad they can be. And the -- as Your Honor has stated here, it covers a lot of ground and too much ground. And there was not consideration given in exchange for some of those releases and I'm speaking specifically of retained professionals, for example, who are covered by the way by exculpation, which we'll be talking about later. And also all the employees of the debtor.

So I believe, Your Honor, that the releasees should be circumscribed as pretty much in line what Your Honor just said.

Your Honor, there's a lot of overlap between the exculpation provisions and the release provision. I can certainly wait to discuss the issues we have there. But, Your Honor, on the third party releases, just one point I wanted to make.

The debtors have agreed to leave something from

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MS. OKIKE: No, Your Honor, we tried to be consistent with Aegean, but if we weren't successful in that we're happy to (indiscernible).

THE COURT: Okay. What I read in the plan seemed much broader than what I had done in Aegean.

MR. MORRISSEY: Your Honor, would you like me to allow Ms. Okike to respond?

THE COURT: To that question only, yeah, but stay where you are at the podium and I'll hear you.

MS. OKIKE: Your Honor, we tried to limit it to, you know, transactions and orders that Your Honor has approved in connection with, you know, various negotiating, executing, implementing transactions in connection with these Chapter 11 cases. That was our intention.

THE COURT: Okay. I don't know, maybe I'm remembering something wrong, but I thought when I looked at it that the exculpation language was significantly broader than what I had done in Aegean.

MR. MORRISSEY: Your Honor, we thought so too and as a matter of fact, we actually came to an agreement that debtor's counsel on certain parts of that exculpation provision.

THE COURT: Okay.

MR. MORRISSEY: And I think that should narrow the issue --

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the third --

THE COURT: Okay.

MR. MORRISSEY: -- released party and that would be the wind down debtor, because we believe, Your Honor, that releases should not be applied prospectively. And we do believe that only the people who have been involved in the case between the petition date and the effective date --

THE COURT: Okay.

MR. MORRISSEY: -- should be covered.

So with that, Your Honor, I'll -- I guess I'll wait until exculpation.

THE COURT: Well, let's do it together, to the extent that you're complaining about releases of professionals, or I suppose, committee members. I do think the exculpation here, the provision was too broad as -- at least as set forth in what I've seen. I don't know, I haven't gotten through all the different iterations of the confirmation order that you've submitted, but you know what I did in the Aegean case, which was narrower and are you suggesting more than that here, and if so, why?

MR. MORRISSEY: The answer to that is, no, Your Honor. We -- as a matter of fact we --

THE COURT: I'm sorry, I was asking them.

MR. MORRISSEY: Oh.

THE COURT: That's all right.

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THE COURT: Very good.

MR. MORRISSEY: -- before Your Honor.

THE COURT: So is there any remaining issue on the exculpation?

MR. MORRISSEY: There is some.

THE COURT: Okay.

MR. MORRISSEY: Not nearly as much as there was originally.

THE COURT: All right.

MR. MORRISSEY: (indiscernible) that, Your Honor. Your Honor, I already mentioned the professionals being on the list of both released parties and exculpated parties.

THE COURT: Yeah.

MR. MORRISSEY: We don't have a problem with them being on the list of exculpated parties. I just wanted to make that clear. The plan also provided for not only prospective releases to entities that didn't exist or individuals, but also the exculpation provision does the same thing.

The -- we had an issue that we did resolve, Your Honor, regarding the special committee since Mr. Kirpalani just spoke, I figured I'd raise that first.

The special committee itself was actually -- I'm sorry, not committee, the special committee investigation

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1 itself was among the exculpated parties. And in response to  
2 the U.S. concern about that, debtors proposed that the Court  
3 -- if the Court approves the settlement or transaction, to  
4 use Your Honor's language, the parties to that settlement or  
5 transaction so that the investigation itself can be part of  
6 the exculpation provision.

7 So I think we have an agreement on that, Your  
8 Honor, as long as its tied to the Aegean standard of the  
9 Court approved settlement or transaction.

10 THE COURT: Okay.

11 MR. MORRISSEY: The debtors have also agreed that  
12 to add a provision that nothing in the plan shall limit the  
13 liability of professionals to their clients, pursuant to New  
14 York comp codes and regulations, Rule 1.8(h). It's  
15 basically the idea --

16 THE COURT: I'm familiar with that --

17 MR. MORRISSEY: -- (indiscernible) professionals.

18 THE COURT: I understand it.

19 MR. MORRISSEY: So the -- one issue we have  
20 regarding exculpation is that we still have, is that the  
21 distribution agent which is the same finance, is listed  
22 among the exculpated parties. This we believe is an  
23 improper perspective release and effectively shields the  
24 distribution agent from future, which is to sale post sale,  
25 post effective date conduct.

1 with Mr. Morrissey? Is there a continued objection to it?

2 MS. OKIKE: I think this -- I don't want to speak  
3 for Mr. Morrissey, but I think he categorically opposes an  
4 entity that doesn't come into effect until after the  
5 effective date from receiving an exculpation. And I think  
6 we just have a disagreement given the rule that the  
7 distribution agent will play, in addition prior to the  
8 effective date and getting ready to actually effectuate the  
9 transactions.

10 MR. MORRISSEY: Your Honor, Richard Morrissey  
11 again for the U.S. Trustee. To be candid, Your Honor, I  
12 don't remember exactly what the language of the Fairway  
13 provision was, because (indiscernible) in fact provided to  
14 us a while ago.

15 All I can go by, Your Honor, what I'm reading here  
16 in the (indiscernible) as far as whether it's being  
17 exculpated and who is exculpated. This is not an estate  
18 fiduciary that's being exculpated here, the distribution  
19 agent. We do recognize as Ms. Okike said, there's certain  
20 things that the -- that finance or the distribution which it  
21 has to do in order to carry out the plan. But the --

22 THE COURT: Yes, they do it --

23 MR. MORRISSEY: -- exculpation goes beyond that.

24 THE COURT: They do it -- well, in what way are  
25 they not a fiduciary under my order, they receive these

1 And we would ask that the distribution agent be  
2 stricken unless the Court wants to apply the Aegean standard  
3 to narrow that release for the distribution agent, related  
4 to carrying out the Court's orders.

5 I can -- I was going to go on to other issues but  
6 I can stop now and allow counsel to respond.

7 THE COURT: Well, I'll hear from the debtor's  
8 counsel on the proposed exculpation or releases as to the  
9 distribution agent.

10 MS. OKIKE: Your Honor, with respect to the  
11 distribution agent, the distribution agent is going to be  
12 taking certain actions in connection with effectuating the  
13 transactions that Your Honor is approving under the plan.  
14 And we think particularly in this case, you know, dealing  
15 with some of the comments by the governmental entities they  
16 should be protected as, you know, in the capacity when  
17 they're acting as a distribution agent under the plan. It  
18 essentially (indiscernible) that Your Honor has approved.

19 We know that you approved something similar in the  
20 Fairway case and we tried to model that in the plan as well.  
21 We think it's appropriate in this case, given that the  
22 distribution agent is a fiduciary acting on behalf of the  
23 debtors, in connection with consummating the transactions  
24 under the plan.

25 THE COURT: Okay. Have you shared that language

1 assets in trust and they distribute them in trust, so how  
2 are they not a fiduciary?

3 MR. MORRISSEY: Well, Your Honor, they're  
4 (indiscernible) to the extent that they are fiduciaries  
5 (indiscernible) where the exculpation is not.

6 THE COURT: Well, I don't have the problem if you  
7 want to -- yeah, I'm not going to give him exculpations for  
8 anything that they do, right. For heaven sakes, if they  
9 steal assets, I'm not exculpating them from that. But in  
10 performance of the tasks that I have approved and the  
11 faithful performance of the duties or of the agreements that  
12 I have approved, why should they be liable? And the same  
13 thing I said this morning, you know, they're going to have -  
14 - once I order them to do these things, they're going to  
15 have a statutory obligation to do them, right?

16 MR. MORRISSEY: Yes, Your Honor, but not  
17 everything that they do is going to be within the Court's  
18 purview. So if there's signed agreements, for example,  
19 things like that --

20 THE COURT: Surely you can come up with language  
21 that makes clear that all we're really doing is saying  
22 they're exculpated to the extent that they faithfully  
23 perform and execute the transactions that I have approved and  
24 the duties that I have assigned to them, right? If that's  
25 not the perfect language, you should surely can come up with

1 some.

2 MR. MORRISSEY: We will do that. Thank you, Your  
3 Honor.

4 Your Honor, the next issue --

5 THE COURT: Before we go to the next issue, just  
6 hang on one second. Just one second.

7 Before we go to the next issue, where do we stand  
8 on the one that is nearest and dearest to my heart, which is  
9 whether I have to do a confirmation order by this evening?

10 MR. GOLDBERG: Your Honor, I think we have someone  
11 --

12 THE COURT: Just wait, please.

13 MR. GOLDBERG: We had some ongoing discussions  
14 that we had with the debtor and the committee regarding Your  
15 Honor's request on that point as well. And so the next  
16 break I'll speak with them and hopefully (indiscernible).

17 THE COURT: Okay. Whoever was speaking on the  
18 line. Who was it?

19 MR. BARNEA: Sorry, this is J.D. Barnea from the  
20 U.S. Attorney's Office. I spoke earlier this morning about  
21 the exculpation clause.

22 THE COURT: Right.

23 MR. BARNEA: I just wanted to note for the record  
24 our continued objection to this entire enterprise and to  
25 note that in the initial proposed order that would have

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1 appellate rights if necessary to the perspective exculpation  
2 of debtors and non-debtors as to many tasks that may or may  
3 not violate all sorts of obligations they may have to the  
4 government and others.

5 And so we just wanted to put that on the record.  
6 We understand, Your Honor, that the Court has already spoken  
7 a little bit to that this morning, but we really would like  
8 the opportunity to submit our arguments in writing, before  
9 the Court enters any final order.

10 We also don't -- haven't seen any final order yet.  
11 We understand that they're going to be working on that, so  
12 we'd like the opportunity to see that language before it's  
13 approved by the Court and to submit our written objections  
14 to it.

15 THE COURT: Okay.

16 MR. MORRISSEY: Your Honor, just to add what  
17 counsel had just said. I thought it would be helpful to  
18 point out to Your Honor where the new language appears,  
19 because it's not actually with the exculpation language  
20 itself. It's separate. And I hesitate to say the most  
21 recent version of the plan, I think this is. It's Article  
22 6, provisions governing distributions, Subsection B, which  
23 is called power -- rights and powers of distribution agent.

24 And then Subparagraph 1, powers of the  
25 distribution agent, the debtors added a paragraph and I

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1 approved the plan in this case, it would have carved out the  
2 government from the exculpation provision, it was only the  
3 revised proposed order that was proposed for the first time  
4 on the morning, on Thursday morning at the beginning of the  
5 confirmation hearing that purported to undo the appropriate  
6 carve out for the government from the exculpation clause.

7 That is why we objected that same day and the  
8 letter that I sent. And that's why in our letter we asked  
9 for an opportunity to fully brief the issue of whether  
10 exculpation is appropriate in this case as against the  
11 government.

12 We understand, Your Honor, that you've decided the  
13 Aegean case, a decision that we don't necessarily agree with  
14 on the government's side, but we wanted an opportunity to  
15 submit fully our arguments as to why an exculpation as  
16 against the government is inconsistent with any number of  
17 constitutional provisions that's been consistent with the  
18 Bankruptcy Code, it's been consistent with the District  
19 Court's decision in the Perdue case and in many other  
20 provisions that we could explain if we were permitted to  
21 submit a full brief.

22 Again, time prevented us from doing so, although  
23 we're working on as we speak and are prepared to submit one  
24 perhaps even this afternoon or tomorrow, but we didn't want  
25 to lose the opportunity to object and to preserve our

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1 believe that's what Mr. Barnea was referring to.

2 THE COURT: Okay.

3 MR. MORRISSEY: Your Honor, I was going to  
4 continue. I didn't know if anyone else wanted to comment on  
5 the exculpation regarding the distribution agent.

6 THE COURT: Go ahead.

7 MR. UPTEGROVE: Your Honor, William Uptegrove on  
8 behalf of the United States Securities & Exchange  
9 Commission, if I may.

10 THE COURT: Yes.

11 MR. UPTEGROVE: Your Honor, I don't have any  
12 further argument on the issue of exculpation per se, but did  
13 want to clarify a couple of points, I think including the  
14 provision of the plan that the U.S. Trustee was just  
15 mentioning.

16 So I understand that the Court wants to  
17 (indiscernible) the exculpation language consistent with its  
18 standard language particularly used in the Aegean case. We  
19 just wanted to confirm that the portions of the three  
20 paragraphs in our objection filed this morning will be  
21 stricken as inconsistent with, you know, the Aegean standard  
22 and will be applicable law that Your Honor discussed this  
23 morning.

24 THE COURT: I don't have --

25 UNIDENTIFIED: Your Honor --

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THE COURT: I don't have all that language in front of me, but I think that's right.

MR. UPTEGROVE: And I think -- I don't have the full plan in front of me, but I think the U.S. Trustee, I think that it's -- we're talking about the same provision. I see it here as page 69 and 70 of the PDF of 158 of Docket No. 1138. There's a -- there's similar language to what we've been (indiscernible) confirmation. It's a little different, so I don't know if that's the same provision but it reads something to the effect and extent that any cryptocurrency is deemed to be a security of the SEC or any governmental unit.

And then it goes on to talk about good faith and no liability for any -- various acts, including distribution of cryptocurrency. That in addition to the Aegean language that Your Honor talked about, so I just wanted to make sure that that would be something that wouldn't be, you know, included and applied in the order, it's over and above (indiscernible) of the Aegean standard.

MR. BARNEA: Your Honor, this is J.D. Barnea again from the U.S. Attorney's Office. I just wanted to read to the Court the specifics, most problematic language that's in paragraph 142 and 143 of the proposed -- the latest version of the proposed confirmation order, which in our view, goes well beyond even what this Court allowed in Aegean, and is

well beyond Aegean even to the extent that Aegean is the appropriate standard here --

THE COURT: I'm not going to do -- I'm not going to do anything of that scope. On the other hand, as I said earlier, whatever I approve and confirm, there are individuals who will have a statutory obligation to do it. The regulators have had the chance, but have declined the chance to suggest or to show me that any of these transactions are illegal or should not go forward. It just suggested that there might be issues, but have not taken an official position.

To me you ought to be and will be estopped through the exculpation provision from contending that the individuals who carry out their statutory obligations to implement the deal that I approve are personally liable in any way for doing so. That doesn't mean that you can't go after them if they violate tax laws. It doesn't mean you can't go after them if they act unfaithfully, et cetera.

It does mean to be a hundred percent clear that I am not going to sit here and say that you can say nothing to me, deliberately remain silent as to whether this is a problem and actually is a problem in your view, only to come back after I direct debtors, for example, to distribute VGX and say that the people who did so violated the securities laws and may be criminally or civilly punished individually

totally improper in many respects.

It says, provided further that the United States, the state, and their agencies may not and will not allege that the restructuring transactions are a violation of any rules or regulations enforced by the United States, the state, or any of their agencies, nor will they bring a claim against any person, extremely broadly defined, on account of their -- on account of or relating to the restructuring transactions.

This language, if approved in the final order, could potentially make it so that if someone incurs a tax liability in the restructuring transaction, the IRS cannot assess that tax. If someone commits a crime in implementing the restructuring transaction, they can't be prosecuted for it.

If they commit a fraud, they can't be prosecuted or civilly charged with that. If they violated the securities rules, or if they violate an environmental rule, or any other possible governmental action that relates in any way to the restructuring transactions of which no one even knows what those things might be, this language would enjoin and tie the hands of the United States and the states and all of their agencies from ever claiming so, simply because, you know, they relate in some way to transactions contemplated by a plan of reorganization, not -- that goes

for having done so.

That to me is something I will not tolerate and will not allow. You've had your chance if that's what you think to make that argument. And I won't subject individuals under the compulsion of my own order, my own confirmation order to do things that will subject them to potential liabilities. It's just not appropriate in the slightest. Okay?

MR. BARNEA: So it's the Court's position and we respectfully request the opportunity to submit a brief setting forth our argument in more detail before the Court enters any confirmation.

THE COURT: Go ahead, but hurry up.

MR. GOLDBERG: Your Honor, I just wanted to clarify for the record. We refer individuals, we don't mean just (indiscernible) persons but also legal entities in their roles (indiscernible).

THE COURT: Correct. And I'm just saying, you know, I'm not saying that they can't be stopped, that people can't preserve their injunctive rights. That's fine. But, you know, to kind of purposefully stay on the sidelines and take no position on the issue and then come in and say that what people are under court order to do, they're now personally or they're not subject to penalties for, that's just doesn't make any sense to me, not in the slightest.

MR. UPTEGROVE: Your Honor, William Uptegrove for the SEC. Just to go back to our point, we understand your position. We just for the purpose of clarity to make sure that the final order reflects what I think you've said, paragraph -- again paragraphs -- the U.S. Attorney's Office just talked about two of the three paragraphs that are cited in our objections, so 142 and 143 are the paragraphs the U.S. Attorney's Office mentioned and those are two of the three in our objection.

The third one is SEC specific injunction. And so I think those were the problematic language Your Honor talked about this morning, that you weren't going to be -- you weren't going to enter. So we just wanted to confirm so that when we talk to the debtors afterwards, we're all on the same page about what the language is and isn't.

I think that language should be stricken. I think that's what Your Honor said earlier. I just wanted to make sure that we're all talking about the same thing, one. And then two, there is some sort of I would think similar language in the plan I mentioned about good faith and things of that that go above and beyond Aegean, and just want to make sure that things like that, you know, finding no liability per se isn't what Your Honor has in mind.

THE COURT: I guess --

MS. RYAN: Your Honor, this is Ms. Ryan --

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Additionally, paragraph 143 of the proposed order I think the newest version is Docket 1140. It contains language that references back to paragraph 97 and 99 of the proposed order. And those paragraphs are very broad releases for the purchaser. And again, we find that broad release objectionable. Once the purchaser purchases the property, they're going to have to comply with law, just as, you know, any purchaser, buyer or even debtor in possession would have to. And so we also object to that addition, in addition to what you've already heard.

THE COURT: Which paragraphs in particular of which?

MS. RYAN: In particular, it's 97 and 99, Your Honor. And 99 particularly the breath of it is concerning to me.

THE COURT: Which version --

MS. RYAN: 97 --

THE COURT: Which version of the confirmation order to make sure I look at the right paragraphs?

MS. RYAN: At Docket 1140, Your Honor.

THE COURT: 1140?

MS. RYAN: Yes, sir.

THE COURT: Okay. I don't have that right in front of me, but we'll -- I think the best thing to do on all of these provisions is to see what language we come up

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THE COURT: -- until we see the final language we don't know, but I think -- I hope the concept is clear. Let's just see if we can get the wordsmithing down.

MR. JONES: Your Honor, Seth Jones, pro se.

THE COURT: Yeah.

MR. JONES: A quick question. The SEC has taken a stance that (indiscernible) XRP is a security, that's currently in the middle of a trial. Is that not violating security laws (indiscernible) XRP on the (indiscernible) platform?

THE COURT: Well, there's no ruling at trial, right?

MR. JONES: Okay. But you keep talking about taking a stance on (indiscernible), they took a stance on XLT (ph), right, I just want to clarify that.

THE COURT: I don't think the SEC has even suggested that what Voyager's going to be doing with XRP is a violation of the securities laws, although that's just something they haven't revealed. They haven't said that.

MR. JONES: All right. Thank you, sir.

MS. RYAN: Your Honor, this is Ms. Ryan from the State of Texas. If I may be heard regarding the releases?

THE COURT: Sure.

MS. RYAN: Thank you, Your Honor. The State has objected and agrees on the same grounds that you've heard.

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with and then see if there are further objections. Okay?

MS. RYAN: Yes, Your Honor.

MS. OKIKE: Your Honor, I will just say we have been negotiating back and forth with the various governmental entities on these various provisions. And the proviso which appears in all of the paragraphs was what we added to try to get at what Your Honor said in terms of the exculpated parties not being personally liable, in terms of taking actions that Your Honor approves or may approve under the plan.

I totally understand we probably could have done that a little bit better, but that is what we're trying to get at. The second thing we're trying to get at is that we don't believe any language in here should somehow preclude the governmental agencies from having complied with the bar date order.

So, for instance, the SEC did not file a claim against the debtors. And we don't think that there should be anything in this order that somehow insinuates that they're now entitled to file (indiscernible) proof of claim.

THE COURT: I haven't heard anything being said that would entitle them to do that, but.

MS. OKIKE: But we have a specific proviso here, Your Honor, that they're objecting to that says nothing in this confirmation order or the plan shall modify in any

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1 respect the relief previously granted in the bar date order.  
2 And they're explicitly objecting to that proviso and they  
3 did not file a proof of claim.

4 THE COURT: I think --

5 MR. UPTEGROVE: Your Honor --

6 THE COURT: I thought they were objecting to -- I  
7 thought the objection was a different proviso. What's the  
8 objection to that one?

9 MR. UPTEGROVE: Your Honor, William Uptegrove on  
10 behalf of the United States Securities & Exchange  
11 Commission. There's room on filing a proof of claim and  
12 untimely proofs of claims. I don't think there needs to be  
13 a provision in the confirmation order specifically singling  
14 out, you know, the government bar date and our proving  
15 claim, one.

16 And two, there's additional language in here that,  
17 let me just find it. So it says -- so I think this is -- I  
18 think it's the second to last or maybe to last version of  
19 the confirmation order, paragraph 142 in our objection.  
20 It's quoted, provided however that nothing in this  
21 confirmation order or the plan shall modify in any respects  
22 the relief previously granted in the bar date order, just to  
23 point out that parenthetically that don't need another order  
24 to say what's already in a prior order.

25 But, no person or entity including the United

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1 fact that we have a bar date order and the SEC did not file  
2 a proof of claim.

3 THE COURT: All right. I will --

4 MR. UPTEGROVE: Your Honor, it's a liquidating  
5 debtor, it doesn't get a discharge.

6 THE COURT: I will --

7 MS. OKIKE: It's not a discharge.

8 THE COURT: I will look at the proviso and modify  
9 it appropriately. If I can't do so, I shouldn't have this  
10 job, but we don't need any further argument about that.

11 MR. GOLDBERG: Your Honor, Adam Goldberg on Latham  
12 & Watkins on behalf of Finance U.S. Just very quickly to  
13 the frame issue raised by the State of Texas on paragraphs  
14 97 and 99.

15 From our perspective, that language is intended to  
16 implement the free and clear nature of the asset sales and  
17 to protect the purchaser and the acquired assets from claims  
18 and interests that could be brought against those assets and  
19 the debtor's -- in the hands of the debtor's estate.

20 THE COURT: Right.

21 MR. GOLDBERG: Thank you, Your Honor.

22 THE COURT: That just means you're not liable,  
23 taking on liability for liabilities of the debtor.

24 MR. GOLDBERG: Correct.

25 THE COURT: It doesn't mean that you're freed from

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1 States, the state, or any other agencies can seek or receive  
2 a direct or indirect distribution of any property of the  
3 debtor's estate unless they filed a proof of claim prior to  
4 the government bar date.

5 Again, there's already rules in the Code and the  
6 bankruptcy rules for this. And a big problem with it is the  
7 language, the indirect language. Your Honor, I have  
8 absolutely no idea what that means. And it could mean all  
9 types of things in hindsight, and it's just an unmuted  
10 provision that potentially does enjoin something that we  
11 otherwise could do by saying we can't indirectly  
12 (indiscernible) that language, indirect, you know, seek  
13 (indiscernible) a direct or indirect distribution of  
14 property of the debtor's estate. It's -- in our view, it's  
15 not a needed provision. It has ambiguous language that  
16 could be read at some point could somehow impair our police  
17 and regulatory powers and we think that's improper.

18 MS. OKIKE: Your Honor, the reason we have the  
19 proviso is because the provision that they requested that we  
20 add, says nothing in this confirmation order or the plan  
21 shall (indiscernible) release by the United States of any  
22 claim arising under, and all these different things, or  
23 enjoin them from bringing a claim against the released  
24 parties, which includes the debtors.

25 And so we think you need a proviso in light of the

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1 any of your own liabilities.

2 MR. GOLDBERG: That's exactly right, Your Honor.

3 THE COURT: Yeah.

4 MR. GOLDBERG: And we (indiscernible) to protect  
5 the purchaser of liability is protect against action against  
6 the acquired assets. Thank you.

7 THE COURT: Okay.

8 MS. RYAN: Your Honor, this is Ms. Ryan. I think  
9 that's the spirit of those two paragraphs. I do think that  
10 they're overly broad, but I'm happy to work with counsel to  
11 find wording that we can all live with.

12 THE COURT: Okay.

13 MR. MORRISSEY: Your Honor, Richard Morrissey for  
14 the U.S. Trustee, shall I continue?

15 THE COURT: Go ahead.

16 MR. MORRISSEY: Okay. Your Honor, the next issue  
17 on the subject of exculpation covers certain definitive  
18 documents. That is a defined term. It's paragraph 60 of  
19 the plan. We have no objection, Your Honor, to the  
20 inclusion of certain of these documents listed, in the  
21 context of exculpation such as the disclosure statement and  
22 the plan and confirmation order, for example.

23 But we did raise objections to the inclusion of  
24 certain other documents. And, Your Honor, the debtors have  
25 agreed to take out a couple of those exceptions from the

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exculpation provision.

THE COURT: Right.

MR. MORRISSEY: One is listed in the declaration as subsection G as in George. The management transition plan which is something that's going to be happening later on. And also subsection H which is any new material employment consulting or similar agreements entered to between the (indiscernible) any of the debtor's employees if any.

So those we agreed to. There's one thing that we didn't quite come up with an agreement on, but I believe we can agree right here and now, as a matter of fact counsel and I discussed this before Your Honor took the bench this morning.

Subsection K of that definition has a catch all to basically account for anything that is missed in the prior subparagraphs. And it covers all kinds of documents, deeds, agreements by filing notification to pleadings, certificates, orders, letters, instruments and the list goes on and on.

Your Honor, the catch all provision we believe should be expressly limited post petition, pre-effective date, that time period. And the U.S. Trustee would also go along with this language provided that all of the definitive documents in the catch all paragraph are within the Court's

The amended plan provided that all proofs of claim were to be considered objective and disputed without further action --

THE COURT: Right, that's changed. I saw that change. I saw the change to delete the requirement that only -- the provision that said that only the plan administrator could object.

MR. MORRISSEY: Correct.

THE COURT: And I saw that they addressed your concern about how late claims would be treated and made clear that they're not automatically gone. They're gone subject to my approval that they're gone.

MR. MORRISSEY: Yes, and Your Honor has officially stolen my thunder. And therefore, I have nothing further. Thank you, Your Honor.

THE COURT: Okay. All right.

MR. KIRPALANI: Your Honor, if I may?

THE COURT: Yeah.

MR. KIRPALANI: Susheel Kirpalani from Quinn Emmanuel. I just wanted to come back to you on the issue of the releases, the insiders, the justification for why insiders who aren't actually paying anything should be getting a release. And the individuals as we mentioned and as Mr. Pohl testified with whom the buck stopped were the CEO and COO, Mr. Ehrlich and Mr. Psaropoulos. In all of the

purview.

In other words, we don't object to the language so long as the Court will (indiscernible) those documents. Now then counsel can tell me if I have that correct.

MS. OKIKE: Yes, I think subject to the agreement on language.

THE COURT: Okay.

MR. MORRISSEY: Okay. Your Honor, while I'm here, I resolved a couple of other issues unrelated to exculpation. I can certainly let the Court know later or now, it's not that long, it's up to the Court.

THE COURT: Let's get the good news now.

MR. MORRISSEY: Okay. And, Your Honor, I should say also that the parties have been very cooperative throughout this process in striving to reach certain understanding.

The amended disclosure statement, Your Honor, does disclose both the management transition plan and an employee transition plan, but it --

THE COURT: You resolved it by saying I'm not specifically approving them, yes.

MR. MORRISSEY: Correct.

THE COURT: Okay.

MR. MORRISSEY: Thank you, Your Honor. The debtor has agreed to that.

negotiations with them, it was always the understanding that this is a package D&O settlement for the insiders and it's for a reason.

Every one of those subordinate officers would otherwise be pointing the finger and potential cross claim against those two, because those are the individuals with whom the buck stops.

And so I think it is -- it's not going to be a faithful implementation of the settlement, the so-called D&O settlement if individuals who could then claim --

THE COURT: That explains why you want to release them of liability as to the 3AC problem.

MR. KIRPALANI: Well, if I may, Your Honor, on that point I anticipated you asking me that. In paragraph 10 of Mr. Pohl's declaration it's clear what the investigation entailed. It's more than just the loans of 3AC. It was Voyage -- all of Voyager's loans to third parties, the diligence performed in connection with all of those loans, the formation and function of the risk committee, Voyager's staking of customer cryptocurrency assets, Voyager's regulatory compliance, Voyager's communications with the public, Voyager's prepetition payments to insiders and certain third parties, and other aspects that's referring to the insurance company, Your Honor, and other aspects of Voyager LLC's business.

1 While I understand we didn't take on a wholesale  
2 investigation of what payments might have been paid to  
3 employees generally. I will come to that in a moment.  
4 Certainly with respect to the insiders, I think if the  
5 releases could have least tracked the language of the  
6 testimony that we had of what was investigated, I think that  
7 would be acceptable.

8 THE COURT: Read that language to me again,  
9 please.

10 MR. KIRPALANI: Yes, Your Honor. Voyager's loans  
11 to third parties, with a particular focus on the couple of  
12 loans to 3AC, the diligence performed in connection with  
13 those loans, the formation and function of Voyager LLC's  
14 risk committee, Voyager LLC's staking of customer  
15 cryptocurrency assets, Voyager LLC's regulatory compliance,  
16 Voyager LLC's communications with the public, Voyager LLC's  
17 prepetition payments to insiders and certain third parties  
18 and other aspects of Voyager LLC's business, the last one,  
19 you know, I think is probably too vague to be meaningful.

20 The specific individuals were also listed in  
21 paragraph 13 of Mr. Pohl's declaration. I did miss a couple  
22 when I was trying to do it from memory.

23 And with respect to the employees broadly, Your  
24 Honor, although it wasn't the focus of the special committee  
25 or of Mr. Pohl's work and his testimony, it was the focus of

1 feasibility of the plan, that these folks are necessary in  
2 either direction, whether we sell (indiscernible) and  
3 frankly particularly if we do the (indiscernible)  
4 liquidation. The feasibility of that is tied to the --  
5 these individuals continuing to perform their services.

6 THE COURT: Okay. What else do we have, Ms.  
7 Okike?

8 MS. OKIKE: Your Honor, there were some objections  
9 that we are impermissibly seeking a discharge, who obviously  
10 are not entitled a discharge, and we included a provision in  
11 the confirmation order to that effect.

12 I believe we need to consult with counsel Debias  
13 (ph) on the customer data, so that we can come back on that  
14 point.

15 Your Honor, we also had an objection, I believe,  
16 with respect to dollarization. This was by Mr. Schupato  
17 (ph) who argued that customers were entitled to the return  
18 of cryptocurrency on the debtor's platform and that their  
19 claim should not be (indiscernible) as of the petition date.

20 We continue to take the position that  
21 cryptocurrency on the platform is property of the estate and  
22 dollarization is required under Section 502(b) of the  
23 Bankruptcy Code.

24 Your Honor, with respect to the liquidation  
25 analysis, I think Mr. Renzi's testimony made clear that

1 Mr. Renzi's testimony in paragraphs 114 and 115 of his  
2 declaration, which is at Docket 1119. Mr. Slade pointed  
3 that out to me.

4 THE COURT: His declaration was admitted only to  
5 the extent that it dealt with uncontroverted aspects of the  
6 Bankruptcy Code.

7 MR. SLADE: That's correct, Your Honor. He did  
8 testify on those particular points, I think that's what you  
9 directed us to do on -- and I think what Mr. Kirpalani  
10 (indiscernible) it.

11 MR. KIRPALANI: In his testimony, Your Honor, he  
12 did specify that the debtor's releases of potential debtor  
13 claims for the individuals who searched faithfully during  
14 the post petition process, including all of the employees  
15 which are defined as the Voyager released employees, that  
16 those releases were critical to keeping the band together,  
17 to ensuring maximum value for the estate and the customers,  
18 this has not been (indiscernible) of these people. And  
19 there is record evidence on that. And so we would continue  
20 to urge the releases of those employees.

21 THE COURT: I'll go back to my notes and look for  
22 that.

23 MR. KIRPALANI: Thank you.

24 MR. SLADE: Your Honor, I would add that Mr.  
25 Renzi's testimony on that point was in the context of the

1 under either the sale transaction or the liquidation  
2 transaction, creditors will receive at least as equal if not  
3 greater recoveries. We believe that he testified that the  
4 impact of a forced liquidation would result in materially  
5 lower recovery values for cryptocurrency in a Chapter 7. We  
6 believe we've satisfied the best interest tests. And there  
7 was a handful of objections on that which we're happy to  
8 address.

9 THE COURT: I don't think I need any further  
10 argument on that, I understand the evidence. You know --

11 MS. OKIKE: Oh, sorry.

12 THE COURT: -- one thing that troubles me, you're  
13 supposed to identify the people who will serve as directors.

14 MS. OKIKE: Oh, correct, Your Honor, I --

15 THE COURT: The original plan said that well,  
16 you're just going to have a trustee, you're not going to  
17 have directors so you don't have to do it. But you've  
18 modified your plan now to say that there will be independent  
19 directors who will be pursuing the intercompany issues.  
20 Don't you have to say who they are? Doesn't the Code  
21 require that?

22 MS. OKIKE: Yes, Your Honor, we agree that we do  
23 need to disclose who those parties are. We would like to be  
24 able to work with the plan administrator with respect to  
25 that.



1 Ideally I think in the debtor's view it would be  
2 the independent directors that are currently serving, but I  
3 think there was a desire to have a conversation with the  
4 plan administrator, as to who would continue to serve in  
5 those roles.

6 We do agree that we need an independent director  
7 at all three entities, given the complex within the entities  
8 with respect to intercompany claims. And we would identify  
9 those persons, you know, prior to the plan going effective.  
10 I guess we could provide an opportunity for --

11 THE COURT: See that's the problem I think people  
12 may not have been paying attention to, but 1129(a)(5)(A)(i)  
13 says you have to disclosed it as a condition to  
14 confirmation.

15 MS. OKIKE: Understood, Your Honor.

16 THE COURT: I didn't write that, but I'm required  
17 to abide by it, so I think you have to come up with the  
18 names.

19 MS. OKIKE: Your Honor, if we could confer with  
20 the committee during the break on that. We understand that  
21 we do need to disclose the identities and we'd just like to  
22 have a conversation with them.

23 THE COURT: Okay. Two relatively minor points  
24 that I noticed. There may be others in the proposed order,  
25 but in the plan and disclosure statement, you say that

1 debtors to honor, keep in place, not change any of their  
2 insurance policies. I don't understand how that's  
3 consistent with potentially going after this \$10 million  
4 insurance policy that was bought shortly before the filing  
5 of the case. It seems like it would directly order you not  
6 to do so and to keep that policy in place. You need to look  
7 at that language.

8 MS. OKIKE: Will do.

9 THE COURT: It's probably just form language you  
10 took from something else, but it doesn't match what you're  
11 trying to do in this case.

12 MS. OKIKE: Understood, thank you, Your Honor.

13 THE COURT: Is there any argument as to the  
14 confirmation of the plan of reorganization?

15 MS. MOYNIHAN: Your Honor?

16 THE COURT: Yes, who is that?

17 MS. MOYNIHAN: Kelly Moynihan, Kilpatrick Townsend  
18 & Stockton, counsel for the ad hoc group of equity interest  
19 holders of Voyager Digital Limited.

20 We did want to be heard briefly related to an  
21 issue that you just addressed about the post effective  
22 dates, independent directors and the plan administrator. I  
23 can do them now or whenever else you would prefer.

24 THE COURT: Well, there's no time like the  
25 present.

1 professional fees will be subject to review through the  
2 confirmation date, it's kind of a specific distinction  
3 between the confirmation date and the effective date in that  
4 regard. I think I'm required to approve the reasonableness  
5 of all fees through the effective date of the plan. So you  
6 need to change that.

7 MS. OKIKE: Understood, Your Honor.

8 THE COURT: There are provisions in the plan  
9 administrator agreement and in the plan that effectively say  
10 that if you get a letter or a communication or a  
11 distribution that's returned to some undeliverable that you  
12 don't have to do anything to try to find that customer.  
13 Almost every plan I see has that provision, and so far as I  
14 know I've never approved it. So --

15 MS. OKIKE: Okay.

16 THE COURT: -- I'm sure you can see whatever  
17 language in prior cases you've had with me, that I require  
18 you make reasonable efforts to find people. I don't think  
19 it's right --

20 MS. OKIKE: Yes, Your Honor.

21 THE COURT: -- just because one letter is returned  
22 that they forfeit their distributions.

23 And then look at the various insurance provisions  
24 of your proposed order, because the -- a number of them,  
25 there are five or six of them that essentially require the

1 MS. MOYNIHAN: Thank you, Your Honor. As Mr.  
2 Posner from my firm noted on Friday while we've resolved our  
3 filed objections to the plan, subsequent to those  
4 resolutions, there have been certain developments that are  
5 concerning to our client on -- as I'll explain it, I think  
6 the confirmed can be equally resolved.

7 As the Court is aware Voyager Digital Limited,  
8 commonly referred to TopCo and (indiscernible) a publicly  
9 traded on the Toronto stock exchange, the ad hoc group is  
10 comprised of shareholders who are parties to a class action  
11 of defrauded equity holders and common stock holders.

12 Our clients have asserted that there are  
13 approximately \$230 million of intercompany claims due from  
14 OpCo and SoldCo to TopCo that are dollars in allowable  
15 claims, which should result in a distribution to TopCo  
16 equity interest holders.

17 Late last year, we commenced an adversary  
18 proceeding for declaration of the intercompany claims are  
19 valid and allowable, based upon among other things, the  
20 debtor's own statements and schedules, which listed those  
21 intercompany claims as allowable and did not mark them as  
22 disputed, unliquidated or contingent.

23 On the eve of this confirmation hearing that  
24 changed a little bit, which I will explain. As the Court's  
25 aware the debtors have asserted in the various iterations of

the disclosure statement that the intercompany claims should be subordinated, and then ultimately substantially all of the intercompany claims should be recharacterized.

After engaging in expensive dialogue with debtor's counsel, as well as document discovery, approximately two or so months ago the debtor's counsel advised that they had determined that the debtors couldn't resolve the intercompany claims, but rather than independent directors of each of the debtors would investigate and analyze the intercompany claims and engaged in negotiation to resolve those claims and determine to what extent, if any, they should be recharacterized.

Over the last six weeks the ad hoc group has had several meetings with TopCo's independent director counsel Katten Muchin. The ad hoc group believes that the Katten independent director Mr. Ray has been thoughtfully, carefully and robustly advocating on behalf of creditors and interest holders at TopCo with respect to the intercompany claims issue.

Despite what the debtors and other parties had hoped, the issues surrounding the intercompany claims have not been resolved prior to this hearing. And as a result, all of the parties' rights including the ad hoc groups have been preserved under the plan and the intercompany issues we've resolved post confirmation part of the winddown debtor

would be subordinated to customer claims.

Having the committee appoint the plan administrator and have the oversight committee be made up of solely creditor committee members means that there's real no advocate for the interest of creditors and interest holders at TopCo post (indiscernible) date, allowing members of the committee to appoint the new confirmation independent -- post confirmation independent director at TopCo should be problematic.

The committee's goals in this case has been clear and obvious, that's to maximize values to the claims of the customers at OpCo which comes with a cost to TopCo as interest holders. This has been evidenced in a number of ways.

First, the debtor's stipulation with Alameda and the committee we think is very telling. The stipulation allows -- provides that FTX will waive its \$75 million claim against the debtors or assign its claims to OpCo at the debtor's option.

The ad hoc group certainly questions (indiscernible) object to assigning the loan claims to OpCo (indiscernible) have tried to assert the guarantee claims for the 75 million against TopCo.

Further, in the event that the particular tactic doesn't work and there is value for TopCo's equity interest

activities.

We understand as of this hearing that TopCo and OpCo are still engaged in the dialogue over the intercompany claims and that no resolution has been reached yet.

There's been some very recent developments in the case, we believe that there should be a separate plan administrator appointed for TopCo. For example, the FTX stipulation which I'll discuss in a minute was filed just now before confirmation objections were due. The government security stipulation was filed on February 27th. The debtors filed the amended plan, which included a number of changes, including that the current independent director would be discharged upon the effective date, or we one wind down debtor with one plan administrator appointed by the committee for all of the debtor entities.

The oversight committee will be comprised solely of members from the creditor's committee and the plan administrator will direct new independent directors of each debtor entity.

Last Wednesday HoldCo amended its schedule to reflect the intercompany claims are now disputed, contingent and unliquidated. And last Wednesday evening finance circulated an e-mail to customers that stated among other things, that their recoveries assumed -- intercompany claims would be recharacterized and that the (indiscernible) claims

holders, the stipulation further allows FTX to assign any recoveries received from its TopCo equity interest to OpCo at the debtor's option.

Second, as I previously noted, the \$230 million in intercompany claims have not been resolved yet. While there are current independent directors appointed at each debtor that are attempting to negotiate a resolution of those claims --

THE COURT: Can I interrupt?

MS. MOYNIHAN: -- upon the effective date --

THE COURT: Can I interrupt you?

MS. MOYNIHAN: Sure.

THE COURT: Can I interrupt you?

MS. MOYNIHAN: Uh-huh, yes.

THE COURT: You're not telling me anything new, with very few exceptions, you're not telling me anything I didn't already know. But I thought your issues had been resolved. I'm --

MS. MOYNIHAN: I'm --

THE COURT: -- very unclear as to what has happened to unresolve them.

MS. MOYNIHAN: I think the changes to the plan in the last week were concerning. Our concern is that there isn't going to be an independent party who zealously advocated for what's best at TopCo.

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1 We understand as Mr. Hague (ph) testified that if  
2 there is a conflict that arises, whether we will, or  
3 position conflict a member of the oversight committee will  
4 presume the plan administrator's duties with respect to that  
5 conflict. Our position is that the plan administrator is  
6 being appointed by the creditor's committee. The oversight  
7 committee is being appointed by the creditor's committee.  
8 The creditor's committee has made its goals in this case  
9 pretty apparent and our concern is that there won't be some  
10 independent director appointed by TopCo that really truly  
11 represents TopCo's interest. It's being chosen by the plan  
12 administrator or essentially the creditor's committee.

13 We would like a truly independent person to be  
14 appointed to represent TopCo post effective date, who can  
15 hire their own counsel. The ad hoc group is certainly  
16 willing to select an independent plan administrator to act  
17 for TopCo and would be willing to consult with that plan  
18 administrator.

19 Alternatively, Your Honor, given how diligently  
20 and deliberately and apparently aggressively Mr. Ray has  
21 been in discharging his duties as independent director of  
22 TopCo, the ad hoc group would be satisfied with Mr. Ray  
23 continuing in that position post-effective date and  
24 continuing to retain his counsel Katten on his behalf. And  
25 we would like for him to be granted with authority to handle

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1 plan administrator. So I would object to this objection  
2 just as untimely, but more substantively just to address the  
3 concerns that were raised by Mr. Bosner and the ad hoc  
4 equity group. We agree that until the intercompany claims  
5 are resolved, there will be an independent director in  
6 place. That's an independent director who will hold  
7 fiduciary duties to that entity. That is exactly the  
8 current system that's in place right now at the company and  
9 it's a system that we are carrying forward through post  
10 confirmation.

11 I think the odd part about this request --

12 THE COURT: Will it be the same director or no?

13 MR. ASMAN: Well, that's a subject for discussion  
14 that we want to talk about outside. It's not something  
15 we've thought about, to be quite frank. We've been focused  
16 on confirmation. The plan administrator agreement gives the  
17 plan administrator the authority to put independent  
18 directors in. Somebody has to have the authority to remove  
19 them, they just can't be in there in perpetuity and that  
20 again is the system that's in place right now. The  
21 independent directors could be removed today.

22 THE COURT: Why is the authority limited to the  
23 intercompany issues, as opposed to more generally issues  
24 where there are conflicts between the debtors? For example,  
25 that provision in the Alameda loan clearly there's a

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1 the matters that are issue here, including intercompany  
2 claims, the Alameda guarantee claim and the government  
3 claims asserted against TopCo.

4 THE COURT: What were the matters you wanted --  
5 the intercompany claims and what other matters?

6 MS. MOYNIHAN: The Alameda guarantee --

7 THE COURT: Alameda.

8 MS. MOYNIHAN: -- claim. We ask in the event  
9 under the FTX Alameda stipulation that OpCo retains those  
10 claims to (indiscernible) against TopCo, as well as the  
11 government claims that have been filed against TopCo.

12 The ad hoc group did not believe those are valid  
13 claims against TopCo and does intend to object to those  
14 claims. So we would like to have authority to address those  
15 as well on behalf of TopCo because -- they're certainly at  
16 issue between our clients and any recovery.

17 MR. ASMAN: Your Honor, Darren Asman from  
18 (indiscernible) for the committee.

19 Your Honor asked what has changed since the  
20 objection deadline of the plan, and there's nothing that has  
21 changed. In fact, the only thing that's changed is that  
22 protections have been added in response to some of the  
23 concerns raised by equity.

24 This is the first time this -- even outside of  
25 this court that we're hearing of a request for a separate

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1 conflict between the different debtors.

2 MR. ASMAN: Your Honor, again, this is the first  
3 we're hearing this from the ad hoc group. I don't have a  
4 good answer on the spot right now, it was just raised a few  
5 minutes ago and it's something we can certainly consider.

6 THE COURT: Yeah, but surely it had to be obvious  
7 to you that that's a matter -- that's a provision about  
8 which the different entities would have to produce.

9 MR. ASMAN: Maybe. I think it depends on --

10 THE COURT: Maybe? I think there have been prior  
11 objections to your suggestion that it would work that way if  
12 I remember right. You were suggesting something similar to  
13 that at the time of the FTX deal and you got an explicit  
14 objection.

15 MR. ASMAN: Correct. But I think if the  
16 intercompany claim is resolved in a way such that there's  
17 nothing (indiscernible) up to TopCo it's resolved. I guess  
18 what you're suggesting Your Honor is if at least until that  
19 is resolved, or if it is resolved in a way where  
20 (indiscernible). I hear your point, I'm not saying it's not  
21 an issue. I'm just saying we haven't considered it.

22 But one thing I want to make really clear, the odd  
23 part about this request is it's not really equity that  
24 should even have a say in this. It's creditors at TopCo.  
25 Equity here has a nearly insurmountable obstacle to getting

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1 a recovery in this case and it's for good reason, because  
2 they're equity.

3 The first, Your Honor, they have to somehow  
4 convince this Court and more than \$200 million of capital  
5 contributions from one affiliate to another are somehow not  
6 equity, that's step one. Second --

7 THE COURT: They were a focused debt, weren't  
8 they?

9 MR. ASMAN: Correct, Your Honor.

10 THE COURT: Okay.

11 MR. ASMAN: I will not stray too far afield from  
12 why that's not the debt, but understood. Second, they have  
13 to knock out the \$75 million Alameda claim that comes ahead  
14 of equity. Third, they have to knock out more than \$40  
15 million of claims by governmental entities against TopCo.  
16 And then fourth, and probably most importantly, even after  
17 all of that, there's around \$10 million of general unsecured  
18 claims at TopCo, non-government claims, not Alameda claims,  
19 just unsecured claims. And there's 2 and a half million  
20 dollars at HoldCo.

21 I don't see why it would be -- there's been no  
22 demonstration yet that there's going to be sufficient flow  
23 of cash that's going to satisfy any of those claims at all,  
24 let alone in full.

25 THE COURT: Well, whether we're doing this for

1 THE COURT: That's correct.

2 MR. UPTGROVE: Thank you, Your Honor.

3 MR. HENDERSHOTT: Your Honor, this is Tracy  
4 Hendershott, pro se, creditor.

5 THE COURT: Yes, Mr. Hendershott.

6 MR. HENDERSHOTT: You're saying any other  
7 objections? Does that include our request for a trustee for  
8 creditor request to invoke our rights under Code 1112(a) and  
9 (b) as well as Bankruptcy Code 1104(a)(1) for the findings  
10 of or at least the evaluation of -- for the findings of  
11 fraud, dishonesty, incompetence, gross management?

12 THE COURT: We can move to that unless there are  
13 other points that people want to make on the confirmation  
14 issue itself.

15 MS. OKIKE: Your Honor --

16 MR. HENDERSHOTT: Very good.

17 MS. OKIKE: -- the last point we just wanted to  
18 note there were some objections to the plan administrator.  
19 We believe he's (indiscernible) serving the role, he's an  
20 experienced bankruptcy professional who's intimately  
21 familiar with the debtors and their estates.

22 He testified that he doesn't believe that his  
23 prior representation of the committees here would impede his  
24 ability to serve as plan administrator and that he would  
25 recuse himself in the benefit of any conflicts. And the

1 equity or creditors there obviously has to be an independent  
2 party at TopCo to handle issues as to which TopCo's  
3 interests differ from the interests of other debtors.

4 MR. ASMAN: I agree with that, Your Honor. That's  
5 the role of the independent director.

6 THE COURT: So let's make sure it isn't so  
7 explicitly cabined to the intercompany issues and it's more  
8 broad as to issues where there's a conflict.

9 MR. ASMAN: Understood.

10 THE COURT: And then let's disclose who it is and  
11 hopefully that'll make everybody happy and we won't have a  
12 further issue.

13 MR. ASMAN: Thank you, Your Honor.

14 THE COURT: Okay. Any other objections or  
15 arguments as to confirmation of the plan?

16 MR. UPTGROVE: Your Honor, William Uptegrove for  
17 the SEC. Just not an argument, but a further clarification  
18 from this morning is the Section 1145 I believe is being  
19 dropped from the plan if I heard it correctly on the phone.  
20 So I just wanted to make sure we no longer needed to put in  
21 our submission tomorrow.

22 THE COURT: I understand the debtor is not seeking  
23 anything -- any specific findings one way or the other about  
24 it, 1145; is that right?

25 MS. OKIKE: Correct.

1 plan administrator agreement provides for the same. So we  
2 believe he should be appointed.

3 THE COURT: Okay.

4 MR. HENDERSHOTT: Your Honor, Tracy Hendershott  
5 again. I offered to submit that change from yesterday, you  
6 know, it's well intended and certainly does have credentials  
7 in the space. Mr. Hague has not a single day of experience  
8 as administrator. In addition Mr. Hague was providing  
9 counsel to the UCC chairman, you know, approving these, you  
10 know, very extensive, broad reaching, overreaching  
11 discharges, you know, that you called out yourself, this  
12 gives us great concern that we are going to have the maximum  
13 potential of -- for recovery due to the winddown activity  
14 afterwards.

15 You know, the creditors, Your Honor, are looking  
16 for a mystery (indiscernible), you know, a shark that can  
17 try to increase the 24 percent return that we're talking  
18 about now closer, you know, as high as possible.

19 We need an individual that is experienced,  
20 aggressive, and is, you know, knowing the (indiscernible) of  
21 Mr. Ray that's assigned to the FTX case. We have seen none  
22 of that behavior yet exhibited by Mr. Hague in his guidance  
23 or (indiscernible) UCC and, you know, we stand with our  
24 objections from yesterday. Thank you.

25 THE COURT: Anybody else want to be heard about

Mr. Hague's appointment?

MR. NEWSOM: Your Honor?

THE COURT: Go ahead.

MR. NEWSOM: Your Honor, this is Dan Newsom for (indiscernible) as well. I will second Mr. Hendershott's arguments and state that my position hasn't changed as well and no offense to Mr. Hague, it seems like he has a lot of experience in estates and (indiscernible) is even desirable. However, I would note that the debtors spared no expense as it relates to hiring their counsel and now we're being asked to do I guess pinch our pennies when it comes to appointing the plan administrator.

And, Your Honor, frankly, you know, while the conflict of interests aren't as strong as, you know, we might have led to believe or might have believed ourselves, it is the matter of effectiveness. And in terms of the ability of the Court to appoint an independent plan administrator, creditors would receive maximum confidence that their best interests are heart, versus what we've seen so far in terms of effectiveness from the UCC and by extension Mr. Hague.

THE COURT: Anybody else?

UNIDENTIFIED: Your Honor (indiscernible). Sorry. Ladies first.

MS. DIRESTA: Go ahead, Seth.

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agree with the UCC judgment, because what we found most of the time in this entire case is I think the UCC has only objected to like maybe two things, but otherwise, they have pretty much just gone along to get along with the debtors.

And so we feel that we need an independent party, so it's just not the credentials of Mr. Hague and not having the experience and us wanting a more experience who's really going to fight for us, but someone who has to know fresh eyes, no conflict of interest, who can really come in and fight for us. Like I said, the UCC we feel has not done a good job in representing us and in fighting for us.

I mean, even if you just look at the list of objections, the (indiscernible) objections with, you know, the court documents has only been, you know -- that's it, you know, like go along to get along.

So having someone independent, having someone with proper credentials to really fight for us is what we need, Your Honor. And you're really our last hope when it comes to this, so I hope that you will help us in some way. Thank you.

MR. ASMAN: Your Honor, again Darren Asman from McDermott Wilhelm for the committee. Your Honor, Mr. Hague is going to be tasked with an important role that we expect is going to last through the years. Specifically he's going to be responsible for pursuing a number of bad actors,

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UNIDENTIFIED: Your Honor, the plan administrator is ultimately the most important role for creditors in this bankruptcy. As you know, they can decide if they want to go after someone or not. Why are we now penny pinching (indiscernible) law firm from Detroit, Michigan only because his clients was elected as a chairperson on the UCC when a dozen other professional agencies that have been hired in this case are all (indiscernible) recognized (indiscernible) firms.

Creditors don't want (indiscernible) as Mr. Hague said was his goal. We want to be made whole. We've suffered enough. This is not the time for on the job training. Creditors (indiscernible) the best recovery possible. We deserve a (indiscernible) or a (indiscernible) ticker type plan administrator that has zero connections of Voyager, zero (indiscernible) interest and is only looking to bring the hammer down. Thank you, Your Honor.

THE COURT: Okay. Mr. Asman?

MR. ASMAN: Your Honor --

MS. DIRESTA: Hi, Your Honor.

THE COURT: Oh, who was that?

MS. DIRESTA: Oh, this is Gina DiResta, Your Honor. And I agree with my fellow creditors. We are against having Mr. Hague be the plan administrator. The UCC voted to have him be the plan administrator and we don't

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investigating potential claims, and ultimately I hope recovering a lot more for creditors to bring them closer to whole.

Mr. Hague, will also, of course, be responsible for a number of administrative functions that are typical of post confirmation trust tax returns affecting future distributions and objecting to claims among others.

Your Honor, the committee was given discretion to select a plan administrator in consultation with the debtors. This is common in Chapter 11 cases, as you know, particularly in a case like this, where the only real constituents are unsecured creditors.

The committee took this process seriously at the recommendation of professionals. They interviewed three different candidates for the role, including Mr. Hague. The committee voted for Mr. Hague to serve in this role, and again, this is a committee of seven creditors of whom -- all whom lost their personal assets on Voyager's platform and there are seven creditors who the U.S. Trustee felt could best adequately represent the entire creditor body at their significant (indiscernible) a process that we were not a part of, of course.

The plan and disclosure statement made clear to creditors that the committee would be sluffing if its plan administrator. And on February 15th, the debtors filed a

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second plan supplement, it's Docket No. 1006 which identifies Mr. Hague as the plan administrator.

Importantly as Your Honor's order required, this identification was made one week prior to the voting deadline which was on February 22nd. The purpose of this disclosure, of course, was to ensure that creditors are aware of not only the process for selecting a plan administrator, but ultimately who that plan administrator would be when casting a vote on the plan.

More than 60,000 creditors voted on the plan with an aggregate dollar value of more than \$550 million. Your Honor, one of the creditors asked the witness on Friday, Thursday, I'm losing track of the days now, whether it was unusual that only 60,000 creditors voted. I wasn't on the stand at the time, but I thought about that question quite a bit on the weekend, and my answer is that actually the number is really high. 60,000 people took time to fill out a ballot and then while it may not be a high percentage in number, it's still a big number and it suggests a lot of creditors are watching this case closely and fully understand what's going on.

Your Honor already knows this, but just as a reminder, the creditors who voted, 97 percent in number accepted, 98 percent in dollar amount, for \$541,000 in dollars, voted to accept the plan. And again, that is all

requirement under 1129. That's not.

THE COURT: Not in so many words anyway.

MR. ASMAN: Your Honor, unless you have any questions, I'll stop there, thank you.

THE COURT: Okay. Does the U.S. Trustee have a position about Mr. Hague's appointment?

MR. MORRISSEY: Your Honor, Richard Morrissey for the U.S. Trustee. The U.S. Trustee raised no objection about it, as the U.S. Trustee has no position on the committee's choice of Mr. Hague. Unless the Court has any questions for me.

THE COURT: No, that's fine. I just wanted to know.

MR. MORRISSEY: Thank you, Your Honor.

THE COURT: All right. I'll take those points under advisement. What else do we need to -- we need to cover the trustee motion. Is there anything else on confirmation that we need to cover?

MS. OKIKE: I don't believe so, Your Honor.

THE COURT: Okay. I have a host of rulings to make on the objections. And a host of open points that still need to be addressed. And a 78-page confirmation order that I have many changes to make to. None of that is going to happen tonight. It's already 5:10. I can't see myself finishing all that.

with the understanding that the committee would be selecting a plan administrator and later that it would be Mr. Hague.

You have objections in front of you from a few creditors to the selection of Mr. Hague as the plan administrator. The aggregate claims of those creditors is around \$500,000. Your Honor, we submit that the objections are without merit and simply represent the preference by a few creditors that someone other than Mr. Hague serve as the plan administrator.

And out of 60,000 creditors who voted on the plan, it's not all that surprising that we have objections to many different aspects of the plan, including this one.

Your Honor, in its simplest terms, the objection rests on a notion that Mr. Resnick, the chair of the committee is too friendly with Mr. Ehrlich or was too friendly and has acted as a committee member in a manner that is somehow contrary to creditor interests --

THE COURT: That's what the written objections were, but what I've heard today is that they don't think Mr. Hague is as -- I'll put it this way, as much out for blood as they would like.

MR. ASMAN: I don't think there's anything in evidence that says he's not up for blood or that he doesn't have the experience to do that. No questions were asked about that. And I don't know that that's a confirmation

MR. GOLDBERG: Thank you, Your Honor, (indiscernible) this. We're very grateful for all the time you've given us, Your Honor, completely understand the situation. We have been working throughout the day in an effort to resolve Your Honor's requests and customer data point and just as we months ago sent a proposal to the debtors and perhaps we could have a recess to go over that and all have the opportunity to speak to and the committee and then come back to you.

THE COURT: Yeah, is my health and schedule contingent on that? You're not going to give me a break from your milestone until you work that out?

MR. GOLDBERG: My client, Your Honor, you know, is putting a tremendous amount of resources to this case. We've been the subject of a wide array of accusations without any evidence brought to bear and we are very focused on bringing these proceedings to a successful conclusion as quickly as possible.

We would very much like to resolve the customer data issue as part of the extension of (indiscernible) with Your Honor's permission.

THE COURT: Certainly I'll let you talk to them. Mr. Hendershott, on your trustee motion, if I confirm a plan, a trustee is sort of pointless, isn't it?

MR. HENDERSHOTT: Yes, sir, that's why we're

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hoping to have your consideration to (indiscernible) before you confirm the plan. We understand that under Bankruptcy Code 1112 there is a lot of leeway that Congress has given for you (indiscernible). But, you know, admittedly it's limited our understanding, we're not experts, but we believe that (indiscernible) Congress' intent for 1104(a)(1), there really is no leeway. It doesn't say and, or, should, could, it says the trustee shall be appointed if any of the for cause criteria is found. And those are fraud, dishonesty, incompetence, or gross mismanagement.

THE COURT: Well, if you -- actually you've got that slightly wrong. What the case law says is that --

MR. HENDERSHOTT: Okay.

THE COURT: -- I should appoint a trustee for cause which may include various things. The case law does not say that I must appoint a trustee no matter what the other circumstances are in any instance where I think there was any kind of fraud. The case law is actually to the opposite. It actually says that I have considerable discretion in deciding what constitutes cause, and whether allegations of particular kinds in the context of an individual case constitute cause.

And one of the factors it seems to me here as to whether it's cause for a trustee is, by the time we got a trustee in place, we'll already have a plan administrator in

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a motion, and -- but I do want the Court to understand we were told by the chairman of the UCC to write you letters. And that was false advice until you clarified that for us, that we had to try to put it in a motion, then that's the next step that we did.

Then other creditors have done that as well. They were pushed off until this late stage for discussion. So while the timeliness is not perfect, I think Congress specifically said that any point before confirmation intentionally. I don't think that was an accident.

THE COURT: I -- certainly --

MR. HENDERSHOTT: (indiscernible)

THE COURT: The Code would permit me to do it, but I still have to decide whether there's cause to do it. And I just --

MR. HENDERSHOTT: Right.

THE COURT: It just seems inconsistent to me with where we are on the confirmation hearing. Maybe not inconsistent if we don't confirm a plan, but if I do confirm a plan it just doesn't seem to me to make much sense, right.

MR. HENDERSHOTT: Well, if there truly is fraud, Your Honor, then there is significant benefit to the creditors. And again, this is why this would've been beneficial to have it actually addressed a long time ago.

You know, we're all guaranteed to take a

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place. We're on the verge of confirmation. It doesn't really -- if I confirm the plan, it doesn't make any sense. Now if I don't confirm the plan, then I have to consider it. But it seems to me I have trouble thinking of anything that would constitute cause at this stage of game to appoint a trustee when we're right on the verge of plan confirmation.

MR. HENDERSHOTT: Well, I appreciate your interpretation of that, you know, and I read the Court shall order the appointment of a trustee, I didn't really see the flexibility. But I do know Congress has given you, the bankruptcy court (indiscernible) the judge, the jury and, you know, the executioner. So I don't profess to be an expert.

What I do know, sir, is that this was brought up -- you know, this would've made more sense. This would've made more sense back in August to have this discussion. This would've made more sense back in October of last year when Nexus (indiscernible) you know, brought this up.

Unfortunately during that time period is I (indiscernible) for me personally, I was in a Category 5 hurricane. I lost September, October, November to the end of December for any type of communication, but as soon as I was able to reconnect on January 9th, 10th I think was my initial letter that I brought this up at that point.

And that was a letter, and I understand it wasn't

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significant financial hit. And we are limited to a \$3,000 you know year write off for the tens or hundreds of thousands, whatever the case may be. You know, if someone has \$100,000 loss, this is going to take, you know, end of their natural lifetime. And if there's a case of fraud, if you find that there clearly is a foundation of fraud, that changes for the creditors --

THE COURT: What do you think --

MR. HENDERSHOTT: -- (indiscernible) financial damages that --

THE COURT: What is it you think would happen if right now I said, I want a trustee. What is it do you think would be the consequence? What would result?

MR. HENDERSHOTT: I believe we would be classified at the federal level as victims of fraud, given a significant abilities to take this damages earlier and not parse (indiscernible) amount for the next 30, 40 years (indiscernible) of 3,000.

THE COURT: Well, you know what --

MR. HENDERSHOTT: (indiscernible)

THE COURT: -- let me just disabuse you of that notion. You know, treating you victims of a fraud just makes you a creditor. It doesn't give you any different status or any different kind of claim than the ones you have just by virtue of being an account holder.

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MR. HENDERSHOTT: No, not for claims, for IRS purposes, it's (indiscernible). I apologize for not clarifying that.

THE COURT: Okay.

MR. HENDERSHOTT: Right now, we can't even write off the damages that have been caused by the actions of their debtors in possession.

THE COURT: But the appointment of a trustee -- I don't think the appointment of a trustee automatically gives you any right to claim that you're a fraud victim.

MR. HENDERSHOTT: No, you wouldn't appoint a trustee, Your Honor, unless you found fraud. If you found cause, one of them being fraud, then you would appoint the trustee and we would also get the benefit to actually be able to have some tax, significant tax consequences for the financial harm that's been occurred to us.

We understand. You said numerous times, Your Honor, the path of the (indiscernible), we know we're not going to go back, you know, over the last nine months and change any rulings, but again, 1104(a)(1) states, any time before confirmation. They specifically open it up from this very point in time to have justice served and an evaluation performed, and the defraud, dishonesty, incompetence, or gross mismanagement has occurred. We've never been given that opportunity throughout this last nine months to have it

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tax losses. Because frauds come in many different forms and they have many different victims and I would expect that it -- you wouldn't get a tax benefit unless if I were to find that there was something about your whole course of dealing, your individual courses of dealing with Voyager was a fraud that you were induced to buy cryptocurrencies that you didn't want to buy that, I don't know, all kinds of things that I don't even have allegations to that effect.

MR. HENDERSHOTT: Sir, Tracy Hendershott again. Specifically it's IRS Revenue ruling 2009-9 that allows us to be able to take a credit for fraud, financial fraud, but it has to be declared, it just can't be self-proclaimed. And I think it exists in this case and that's what we're asking for you to rule on.

THE COURT: Okay. But then here's my problem. I have no evidence. I have a lot of allegations and letters of fraud, but I have no evidence.

MR. HENDERSHOTT: It's about 20 pages that we submitted on Document 1061, Your Honor.

THE COURT: There's no --

MR. HENDERSHOTT: There's been a mountain of paperwork.

THE COURT: But --

MR. HENDERSHOTT: Sorry?

THE COURT: But unless it -- unless I have

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really made on that.

At least the creditors that submitted this, that's what we're asking for. We want you to evaluate the motion that we submitted with all of the different events and evidence that we submitted. Our impression, Your Honor, is that cause occurred, fraud occurred, dishonesty occurred, incompetence and gross mismanagement occurred, but no one cares what we think. We've elected you to give us your ruling if you agree with that or not.

THE COURT: Okay. Who else wants to be heard?

MS. PROVINO: Your Honor?

THE COURT: Yes.

MS. PROVINO: This is Lisa Provino, pro se creditor. Is there another option for that tax credit that Tracy Hendershott has discussed? Because if not, then I would be supportive of that particular motion that he's talking about at the moment, unless you could talk about something else that we would be able to do a write off.

THE COURT: I don't have --

MS. PROVINO: I probably would (indiscernible).

THE COURT: I don't know about this tax write off or what it is that you would need to show to tell you the truth but it seems to me I would be very dubious about the idea that anything that could be labeled as fraud would automatically give you rise to claim all of your losses as

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testimony from people as to what they actually did, right, you know, just kind of hearsay reports or complaints about specific things without a hearing from the witnesses to tell me whether it actually happened, and why it actually happened, and what the intent was behind it, I don't have a record on which I could find fraud.

You understand in order to find fraud I have to actually find that somebody had an intent to commit fraud, right.

MR. HENDERSHOTT: Well, I don't know if I agree with that, you know, civil laws the burden of proof is much less than the criminal law. We don't have to find beyond a reasonable doubt. And civil law is more likely than not; isn't that correct?

THE COURT: Well, that part is true as to what the burden of proof is but -- or the level of proof but the element of fraud, one of the elements of fraud is intent. Something -- and actually in many states, fraud requires proof by clear and convincing evidence, not by a preponderance of the evidence, which is a standard in between the criminal standard and the ordinary civil standard. I'm still waiting for somebody to be precise enough to tell me where exactly in between, but I guess we know it when we see it.

But fraud is definitely -- you know, intent is an

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1 element of a fraud claim. So I don't -- nobody's taken  
2 testimony of Mr. Ehrlich on these points. Nobody's asked  
3 him. I really don't have an evidentiary record from which I  
4 could find fraud.

5 You know, I'm concerned by the things you've  
6 raised, I don't want to make you think that I'm sweeping  
7 them under the rug and I really haven't had -- nobody's  
8 really even addressed half of them in response. So I don't  
9 want you to think that I'm by any means giving anybody a  
10 pass on anything that's happened in this case or with  
11 Voyager in general. I am not.

12 I am concerned by the things that you've  
13 mentioned, but sitting here right today, I can only make  
14 rulings based on evidence. And to the extent you would like  
15 me today to rule that people at Voyager committed fraud, I  
16 would require evidence of their actual intent and I don't  
17 have it. I just don't have it.

18 MS. PROVINO: Your Honor, Lisa Provino, pro se,  
19 I'm sorry, Tracy, were you going to talk?

20 MR. HENDERSHOTT: Yes, just one second, Lisa.

21 MS. PROVINO: You're welcome.

22 MR. HENDERSHOTT: So, Your Honor, you make a good  
23 point and this goes back to our earlier conversation. You  
24 know, you said despite -- or no one has submitted evidence.  
25 This is our concern with the representation that we received

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1 the IRS, yes. Is my recollection, but I'm not an expert on  
2 IRS Code, but I do think it's specifically for fraud.

3 But talking about fraud, Your Honor, if I may.  
4 Again, we're not experts, so again, what is fraud,  
5 especially in a civil case versus a criminal case. I go to  
6 Black Law Dictionary, I don't need to insult you, sir, but  
7 I'd like to read it. It says nothing about intent. Not in  
8 a court of equity Lex Law states probably includes all acts,  
9 omissions, concealment which involve a breach of legal or  
10 equitable duty, (indiscernible) or competence and are  
11 injurious to another or by which an undue and unconscious  
12 advantage is taken of another. There's not one word about  
13 intent in there. It's about fraudulently committing acts  
14 that causes damage to another.

15 THE COURT: Well, fraud means fraudulently doing  
16 something that's kind of a tautology there. I will tell you  
17 that fraud in almost every context I know requires proof of  
18 intent. If any of the lawyers in the room think I'm wrong  
19 about that, speak up please. But nobody is doing so. It's  
20 kind of -- it's a basic. What can I say.

21 MR. HENDERSHOTT: Okay. So Black's Law is not  
22 correct.

23 THE COURT: I'm sorry?

24 MR. HENDERSHOTT: So the definition in Black Law  
25 for a court of equity is not correct.

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1 from the UCC. And the recent (indiscernible) selecting Mr.  
2 Hague going forward. We have been frustrated with the lack  
3 of what we consider obvious. We don't know the legal  
4 procedures. I -- we thought that the documents that we  
5 submitted, we worked so hard on finding all of the financial  
6 reports, I mean literally a week's worth of effort that  
7 weren't even into the court record was evidence submission.

8 Now, you're saying it's not. You know, our UCC  
9 should have been doing this. But they didn't. And now they  
10 pick the business partner of the brother of the chairman of  
11 the UCC who, Your Honor, we feel the next step after Mr.  
12 Hague is selected, he's going to then pick Jason Resnick's  
13 brother to be his personal legal representation. I mean,  
14 the conflict of interest just never ends and the lack of  
15 representation that we've had as creditors has been almost  
16 as frustrating as the loss of the financial (indiscernible).

17 Your Honor, my understanding is fraud, it's not  
18 the only one for cause, it's dishonesty, simpler than fraud.  
19 It's incompetence, it's gross mismanagement, any of these  
20 quality as for cause.

21 THE COURT: But none of those --

22 MR. HENDERSHOTT: And during --

23 THE COURT: But none of those get what you wanted  
24 under your revenue ruling, right?

25 MR. HENDERSHOTT: I think it's just fraud under

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1 THE COURT: I don't know what the context was, I'm  
2 just telling you fraud, in my understanding, requires proof  
3 of intent. That's been something I've understood my entire  
4 legal career. Every time I've litigated a fraud claim, any  
5 time I've ruled on a fraud claim, intent has been element of  
6 the offense.

7 I am not aware of -- I'm aware of some things like  
8 fraudulent transfers, where people use the word, and it  
9 really isn't fraud, it's kind of a misnomer, but when you're  
10 talking about actual fraud of the kind that's addressed in  
11 Section 1104 that requires intent.

12 Let me hear from --

13 MR. HENDERSHOTT: Okay. So are you making your  
14 ruling now, no fraud, no dishonesty, no incompetence, no  
15 risk management, or is this the discussion and your ruling  
16 comes later?

17 THE COURT: Well I'm going to hear from the debtor  
18 first.

19 MR. HENDERSHOTT: Okay. Thank you, sir.

20 THE CLERK: Your Honor, we're coming on the four  
21 hour mark.

22 THE COURT: Okay. Why doesn't everybody relog in  
23 on the telephone and then we'll finish, okay.

24 (Recessed at 5:28 p.m.; reconvened at 5:44 p.m.)

25 THE CLERK: Your Honor, would you like me to --

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1 THE COURT: Yeah. Why don't you go get them.

2 MR. GOLDBERG: Good afternoon, Your Honor. Adam  
3 Goldberg for the record on behalf of Binance.US. We're  
4 having some just ongoing dialog about the issues in an  
5 effort to resolve things for Your Honor. I think if you  
6 could give us another 15 minutes, we should be able to  
7 report back.

8 THE COURT: Well, I've lost patience with my  
9 request that you agree to change the milestone, and I don't  
10 appreciate you holding that up while you try to resolve  
11 other issues. It is 100 percent clear, including based on  
12 the exculpation that you and others would want, that we're  
13 not going to get there today because I have to give the  
14 Government a chance to file its response either this  
15 afternoon or tomorrow.

16 It's 100 percent clear, since it is already quarter  
17 to 6:00 that I cannot organize my thoughts, issue a ruling  
18 on the disputed points, and go through the 78-page  
19 confirmation order to get something done by midnight. So  
20 tell me that you either extend it, or we'll stop. And I'm  
21 tired of being toyed with on that point. Okay? I want an  
22 answer.

23 MR. GOLDBERG: Very well, Your Honor. May I have  
24 five minutes to call my client?

25 THE COURT: Yes.

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1 proposed resolution in the morning, if not tonight.

2 THE COURT: Okay. All right. Let's get back to  
3 the trustee motion then. There was a creditor on the phone  
4 who wished to be heard?

5 MS. PROVINO: Yes, sir. Myself, Lisa Provino, and  
6 my husband is here as well, Scott Provino.

7 So what -- we have a few questions for you, Your  
8 Honor, please. So we did, just while we were waiting, we  
9 looked up the IRS Ruling 2009-9 and 2009-14, both of which  
10 do say that we need -- we definitely need it to be declared  
11 either a Ponzi, or a criminally fraudulent investment of  
12 some sort in order for us to be able to write off these  
13 significant losses that --

14 THE COURT: Yeah. I was curious about --

15 MS. PROVINO: -- most of the --

16 THE COURT: I was curious about moving 2009-9, and  
17 I looked it up, and it deals with Ponzi schemes.

18 A Ponzi scheme is quite different from what  
19 anything that's been alleged here. You know, in a Ponzi  
20 scheme, people are lied to about what their money is being  
21 used for. I don't think anybody here has alleged that they  
22 weren't actually submitting money for the purposes of  
23 investing in cryptocurrencies, or that Voyager wasn't  
24 actually buying cryptocurrencies, or that their account  
25 statements were fictitious, or any of the kinds of things

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1 MR. GOLDBERG: Thank you.

2 MS. PROVINO: Your Honor?

3 THE COURT: Yeah.

4 MS. PROVINO: This is Lisa Provino. May I speak,  
5 or I'm not allowed to speak yet?

6 THE COURT: I think we should wait for the, in  
7 fairness the Binance lawyer who's gone out to call his  
8 client. Let's wait for him to come back, okay? He has a --

9 MS. PROVINO: I appreciate that, sir.

10 THE COURT: He has a right to hear what you --

11 MS. PROVINO: No. That's fine. I just don't want  
12 you to forget me. Thank you.

13 THE COURT: How could I do that?

14 MS. PROVINO: I would hope that you won't.

15 (Pause)

16 THE COURT: Yes?

17 MR. GOLDBERG: For the record, Adam Goldberg from  
18 Lantham and Watkins on behalf of Binance,US.

19 Thank you for bearing with us, Your Honor. This  
20 has been a long process, and we appreciate everyone's  
21 efforts towards it. Binance.US consents to an extension of  
22 the milestone for entry of the confirmation order due  
23 tomorrow at 5:00 p.m., and we expect to be working with the  
24 Debtors and the committee to respond to Your Honor on the  
25 customer data point in the meantime, and hope to have a

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1 that would be characteristic of a Ponzi scheme.

2 And the reason for that particular ruling was that  
3 you have to show that your loss is essentially a theft, that  
4 the Ponzi scheme perpetrator has stolen, not just that you  
5 didn't get all of your recoveries and that things went bad.  
6 I didn't get a chance to look at the other ruling, but I  
7 can't imagine anything that's been alleged, let alone any  
8 evidence that I've offered, that would support a Ponzi  
9 scheme finding in this case. Mind you --

10 MS. PROVINO: Well, that's my next --

11 THE COURT: -- there are some people who allege  
12 that cryptocurrencies, themselves, are Ponzi schemes because  
13 they don't believe that cryptocurrencies are real, but  
14 nobody here has asked me to rule that.

15 MS. PROVINO: Correct, Your Honor. So well, I  
16 guess where we -- at least where we particularly stand, as  
17 we have received phone calls all weekend here. There have  
18 been calls from people that said that even their money got  
19 stolen through the Voyager platform, some Nigerian -- and  
20 I'm not exactly sure how, but I was trying to understand the  
21 details.

22 But my question to you, Your Honor, is going back  
23 to those five points of criminal intent where it says -- I'm  
24 just going to say they're points, 2, 3, and 4, which we  
25 looked up on the internet, the defendant possesses

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knowledge, the statement is untrue, false statement intended to deceive the intended victims, intended victim justifiably relies in the statement, and that is what I have received phone calls for this past weekend.

So my question to you, Your Honor, is because I don't know if a pro seer can actually subpoena somebody. If there is a way, please tell me. I will -- we will do that. I guess it's a little late, but we just need to know if we can.

And secondly, if we have an opportunity to prove off the fraud and possibly put some witnesses on the stand. Again, I know we're pro se, but please take this into consideration because we have had significant losses, and I honestly am begging you right now to please be openminded to this.

THE COURT: Yeah. Did any of you who want to do, did you file proofs of claim alleging that you were victims of fraud?

MS. PROVINO: I'm sorry, sir. Could you explain specifically what you're asking now?

THE COURT: Yeah.

MS. PROVINO: You mean, the claim that they didn't allow me to -- for voting purposes claims, and then I had to fight for that? Which claim are you speaking of, sir?

THE COURT: Well, you know, the Debtor filed

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are procedures in the Code for subpoenaing people. Usually, if you want to subpoena somebody in connection with a motion that's actually pending, you have to issue the subpoena in accordance with requirements in the rules and have it served on the recipient, and if there isn't a particular proceeding pending for which the testimony is sought, you'd need permission to issue a subpoena under Rule 2004. That's about as much as I, as the judge, should be giving you advice about, okay?

MS. PROVINO: That's fair. I appreciate that. I'll go back to the (indiscernible - 5:58:25) rules, bankruptcy sections. I've looked over, just it's a lot to digest. So I'll go back to that section. You said Rule 2004, right, 2-0-0-4?

THE COURT: That's the Rule if you don't have something -- a motion pending to which the testimony really relates. If you have a contested matter or an adversary proceeding where it's relevant, then the Bankruptcy Rule is -- hang on one second. Rule 9016, which simply incorporates Rule 45 of the Federal Rules of Civil Procedure.

MS. PROVINO: And I will review that. Thank you, sir.

THE COURT: Okay.

MS. PROVINO: The only other question I have -- and

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schedules of people that thought that had -- you know, accountholders, who would have thought their claims were. Anybody who thought they had other claims should have filed a proof of claim form. So if you thought you were a fraud victim, not just that you were an accountholder who just happened to be owed money, but a fraud victim, you should have filed a proof of claim saying that you believed you were a fraud victim.

So to the extent that you did that, then you can get a litigation. You can get a ruling and a litigation of your claim as to whether you were a fraud victim. But if you didn't, then being on the eve of confirmation, I don't know how you're going to get that, at least in this particular context, at least from me. You would have to sue the perpetrators of the fraud, who you think defrauded you, and get a ruling in that context.

MS. PROVINO: Well, lesson's learned. These are life lessons. Is there a way, though, Your Honor, for pro seers to subpoena someone? Could you answer that for me, please?

THE COURT: Well --

MS. PROVINO: Or do we need a (indiscernible - 5:57:37) for that.

THE COURT: Yeah. I'm not supposed to give you legal advice. I'm just supposed to rule on things. There

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I'm sorry for the multiple questions here -- but in terms of the for cause, if you will, if the Debtors are removed and all the releases are voided, does that mean that we can't still go on the Ponzi scheme issue?

THE COURT: If the --

MS. PROVINO: Or is that, like you said, you have to sue them for fraud?

THE COURT: I missed a part of your question. If what happens?

MS. PROVINO: Oh, I'm sorry. If the Debtors are removed and their releases are voided, would that be a for cause for the Ponzi scheme or it basically goes back to what you had said before?

THE COURT: I'm not sure I understand the question. If the Debtors are what and the releases are voided?

MS. PROVINO: If the Debtors are removed from the releases. You know how we've been talking all afternoon about the releases? So if they're just voided out, does that mean we can't go after them for cause for the fraud, for the Ponzi scheme? I mean, we're concerned about tax consequences.

THE COURT: Well, when you say them, if you want to go after individuals and you believe you have a fraud claim, there's nothing in what we're doing here that would stop you from doing that. If you want to make a fraud claim against

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1 the Debtors, it should have been in a proof of claim, and if  
2 it was not --

3 MS. PROVINO: And when would that have been done,  
4 by 10/3, or is that a different date, sir?

5 THE COURT: I think that was -- I'm getting a lot  
6 of headshakes, yes, back last October. So if it's not in a  
7 proof claim --

8 MS. PROVINO: But --

9 THE COURT: If it was not in a proof of claim, you  
10 would need to amend a claim that you filed or get permission  
11 to file a late claim, and there are rules that govern that,  
12 too. I don't know what else to say.

13 MR. AZMAN: Your Honor?

14 THE COURT: Mr. Azman.

15 MR. AZMAN: Darren Azman for the Committee. If I  
16 could just speak to Ms. Provino?

17 Ms. Provino, if there are things that we can do to  
18 mitigate tax consequences or tax liabilities for what is  
19 really going to be the bulk of the creditor body, that's  
20 certainly something that either the committee or when the  
21 plan goes effective, the plan administrator is happy to  
22 consider. I think what I would suggest is that it's not  
23 necessarily something that needs to be decided today.

24 Certainly, somebody can come back to the Court and  
25 file a motion seeking some type of declaratory judgment

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1 THE COURT: That's true, but I would have expected  
2 a little more explanation. It seemed odd to me to just have  
3 none.

4 MS. SMITH: I mean, I think we -- you know, we have  
5 the special report out, we've done extensive disclosures and  
6 conversations about the special committee's investigation.  
7 I think from our view, they were unfounded statements that  
8 didn't necessarily warrant giving any weight to.

9 THE COURT: Okay.

10 MS. SMITH: I did want to reiterate that the  
11 Debtor's position has not changed. There is no cause to  
12 appoint a trustee under 1104(a)(1), and despite statements  
13 that the movants say otherwise, any appointment to do so  
14 would not be in the best interest of creditors, particularly  
15 at this stage of the cases. We're on day three of a  
16 confirmation hearing, seeking authority to proceed with  
17 implementation of the plan. The plan overwhelmingly is  
18 supported by voting creditors, and proceed with  
19 distributions to customers.

20 These cases have obviously been difficult, and I do  
21 understand the frustrations of customers, but no party has  
22 offered any actual evidence of finding of fraud, and to  
23 appoint a trustee at this point in time would essentially  
24 put parties back at day one rather than accomplishing what  
25 we understand customers' role is to be, the efficient return

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1 relief to contend that whatever this was it was. And  
2 whether it satisfies that tax provision, I don't know, but  
3 that's certainly something that if it benefits the entire  
4 creditor body, I'm sure that the plan administrator would  
5 certainly want to consider.

6 MS. PROVINO: Mr. Azman, I want to truly appreciate  
7 you mentioning that. I feel that that is what we need to  
8 do, and I won't belabor this, but at the moment, I just  
9 wanted to say thank you for that. And thank you, Your  
10 Honor, for allowing me to speak on this matter because it  
11 does significantly affect us.

12 THE COURT: Okay.

13 MS. PROVINO: Thank you so much.

14 THE COURT: Okay. Let me hear from the Debtor on  
15 this issue then.

16 MS. SMITH: Thank you, Your Honor. Allyson Smith,  
17 Kirkland & Ellis, on behalf of the Debtors.

18 I'm sure you saw we did file an objection to these  
19 motions. That objection raised a number of the same points  
20 that Your Honor has already --

21 THE COURT: It didn't really address the charges.  
22 It sort of gave them the back of your hand.

23 MS. SMITH: Well, there's really no evidence or  
24 anything other than just kind of assumptions and conclusory  
25 statements.

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1 of assets and conclusion to this process.

2 And lastly, but importantly, I did want to  
3 highlight that also appointment of a trustee or conversion  
4 to a Chapter 7 is an APA termination event.

5 THE COURT: Okay. All right. Is there anything  
6 else? Any other motions or any other issues that we need to  
7 address today?

8 MS. SMITH: No, Your Honor.

9 MS. DIRESTA: Your Honor?

10 THE COURT: Yeah.

11 MS. DIRESTA: Your Honor, this is a pro se  
12 creditor. I have a question.

13 THE COURT: Yes. What is your name?

14 MS. DIRESTA: My name is Gina DiResta.

15 THE COURT: Okay.

16 MS. DIRESTA: And I was not at the hearing when a  
17 fee examiner was requested, but I heard through fellow  
18 creditors that it was approved. And so I wanted to confirm  
19 with you that was indeed approved because I was also told  
20 that there was no orders filed if that was approved.

21 THE COURT: What I ruled at the time was while I'm  
22 not a giant fan of fee examiners, and I did not want  
23 somebody who was going to redo work that the U.S. Trustee  
24 had already done or do what unfortunately my past experience  
25 has been in the case of some fee examiners, which is simply

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1 try to blackmail fee reductions from Debtors. And I asked  
2 if the Debtors and the U.S. Trustee and the committee could  
3 discuss and see if they could agree on something that would  
4 work within that parameter, and I think they've been  
5 discussing it. Nobody has gotten back to me to say that  
6 they can't reach an agreement, but it does seem to be taking  
7 some time.

8 MS. DIRESTA: Okay. Thank you for the  
9 clarification, Your Honor.

10 THE COURT: I was in private practice once and  
11 actually had a fee examiner say to us after raising a few  
12 issues that look, all I want is five percent. I don't care  
13 how. And I will never appoint anybody who does that.  
14 That's just wrong.

15 MR. MORRISSEY: Your Honor, Richard Morrissey for  
16 the U.S. Trustee.

17 Actually, to add one party to the conversation in  
18 addition to the committee and the Debtors, counsel, we also  
19 circulated names to Mr. Kirpalani, if he's still here, but  
20 because he had objected to the fee examiner as well. So we  
21 did pick someone, and I think I advised Your Honor at the  
22 hearing on the Paul Hastings retention application that Lori  
23 Lapin Jones was the person that had been --

24 THE COURT: That's right. You know, I forgot  
25 entirely that you had said that. I apologize.

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1 right --

2 MS. DIVITA: Your Honor, I'm sorry. I was  
3 struggling to get off mute, but this is Michelle DiVita.  
4 I'm a pro se creditor, and I also filed a motion in regards  
5 to appointing a trustee.

6 THE COURT: Yes?

7 MS. DIVITA: I just wanted to make maybe a few  
8 quick clarifying statements, but I think this plan as it's  
9 contemplated today does give the Debtors -- still, they  
10 retain a great deal of business judgment, particularly in  
11 regards to risk management and things of that nature. I  
12 will say that I was maybe surprised earlier when there was a  
13 discussion surrounding the confirmation order and exactly  
14 what conduct the special committee investigated. It was my  
15 understanding that that was a very limited investigation and  
16 only pertained to the (indiscernible - 6:10:23).

17 And so I was surprised to hear that it also  
18 included things such as wagers, communications to the  
19 public, and then also decisions to extend loans beyond  
20 (indiscernible - 6:10:32), particularly in regard to those  
21 transactions that occurred shortly before bankruptcy and the  
22 filing thereafter.

23 I just kind of maybe wanted to provide some context  
24 in terms of why I filed a trustee motion.

25 Really, if the Court (indiscernible - 6:10:52) in

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1 MR. MORRISSEY: But the creditor on the phone is  
2 correct, we have not yet submitted a proposed order. Quite  
3 frankly, Your Honor, the confirmation hearing has been all-  
4 consuming, but as soon as --

5 THE COURT: That's something you don't have to tell  
6 me.

7 MR. MORRISSEY: -- possible after it's over -- yes.  
8 Thank you, Your Honor.

9 THE COURT: All right. Any other issues for today?

10 MR. WARREN: Your Honor, this is pro se creditor  
11 Jon Warren. Can you hear me?

12 THE COURT: I can.

13 MR. WARREN: All right. I had one quick question  
14 to you, is there a way that we can request the transaction  
15 history, including withdrawals of Voyager insiders and board  
16 of directors?

17 THE COURT: You would have had to make a discovery  
18 request for that information, and Voyager would have had the  
19 opportunity to object if it thought it was improper. It  
20 would be -- I can't say anymore than that. I can't tell you  
21 how to do it. I can't give rulings and things that aren't  
22 in front of me. It's just not something I'm allowed to do  
23 as the judge, okay?

24 MR. WARREN: Thank you for the information.

25 THE COURT: All right. Anything else? All

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1 the sense that it seeks to give creditors their money back  
2 as quickly as possible, and that was really kind of the  
3 premise of the FTX transaction.

4 I, you know, kind of bit my tongue back in October.  
5 I think that I maybe I'm a little more risk-averse than  
6 other people on the phone, and that's why my claim is much  
7 lower just because I chose to diversify my cryptocurrency  
8 holding.

9 But I will just say that I was a little surprised,  
10 maybe back when the UTC filed one of their first objections  
11 to say that really no wrongdoing outside of this 3AC loan  
12 had occurred, and really my frustration stems from things I  
13 found in the financial statements and just kind of this  
14 general sense from the Debtors that, you know, these were  
15 very experienced finance professionals, and, you know, they  
16 had fees beyond cryptocurrency and asset management and  
17 things of that nature. And so kind of having to rely on  
18 this very limited investigative report, just thinking, let's  
19 get to plan to confirmation.

20 Now, today, it seems like we've had more time.  
21 There is more that could be investigated, and it hasn't  
22 been. So really an examiner motion wasn't appropriate, but  
23 I think that between the conduct leading up to the  
24 bankruptcy, combined with, you know, this assurance that the  
25 FTX transaction will be great, all in light of the fact

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1 that -- you know, Alameda was an insider shortly before the  
2 filing of bankruptcy petition, not to mention, I think that  
3 under United States law, they're still technically  
4 considered an insider. It's just really this combination of  
5 factors that really made me to distrust the debtors, and I  
6 know a lot of the creditors on the phone maybe agree with  
7 that assertion as well.

8 And so I certainly don't want to -- I do not envy  
9 the position that you are in, whatsoever. I certainly do  
10 not have admissible evidence to any of these factors. I,  
11 personally, have spent a lot of time on this matter, and I  
12 don't have a ton of time to dedicate to it in the future,  
13 but really just trying to rely on the deference of the  
14 bankruptcy professionals, and you, yourself, Your Honor, to  
15 make a decision, and as we confirm this plan, with maybe  
16 that context in mind.

17 And I think as you've heard from these pro se  
18 creditors, we aren't bankruptcy professionals. We're not  
19 experts here, and we don't know I think the procedural part  
20 of things I've seen has at least, for me, personally, have  
21 one of the biggest learning curves.

22 THE COURT: Right.

23 MS. DIVITA: These are just things that I really --  
24 the purpose of my motion was to just kind of paint that in a  
25 context of distrust and their kind of (indiscernible -

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1 frustrated because neither the debtors, nor the special  
2 committed, nor the unsecured creditors committee championed  
3 your cause on allegations about, for example, whether  
4 Voyager was on the brink of bankruptcy, but that's not  
5 really their job. I know you may have assumed it's their  
6 job, but it's not.

7 Those are claims that belong to you individually  
8 that if you believe you have them, you need to pursue. And  
9 they're not being released. Nobody is purporting to release  
10 them, nobody is purporting to express any view about whether  
11 they're right wrong, but I just -- I hope -- I've tried many  
12 times throughout the hearing here -- and it's resulted in  
13 extending the hearing quite a bit -- to give you, all of  
14 you, a lot of leeway as to the questions you can ask and to  
15 try to explain things because I think it's important that  
16 people understand and feel that their questions have been  
17 heard and that the process is open and that they understand  
18 it as much as possible, but I still think that on that  
19 particular point, there's still some confusion, okay?

20 MS. DIVITA: Yes. And I'm sorry, Your Honor. I  
21 was referring to the creditor committee's findings. I don't  
22 think that that changes your statements by any means, but  
23 just to clarify that point, and say subsequently, had it  
24 been asked to customers to contribute their direct claims to  
25 a wind-down or to the trust that would then prosecute those

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1 6:13:42) today or what actions that have led us to where we  
2 are today. That's all I have to say, Your Honor. Thank  
3 you.

4 THE COURT: Okay. In terms of just to correct one  
5 thing you said --

6 MS. DIVITA: Yes.

7 THE COURT: When you said you were frustrated that  
8 the committee found that there was nothing wrong, other than  
9 the 3AC loan, I need to make clear, the special committee's  
10 job really was to figure out what claims belonging to the  
11 Debtor and the estate could be pursued, okay?

12 You mentioned specifically financial statements.  
13 I, personally, have no idea if there was anything wrong with  
14 the financial statements or not or whether there was any  
15 fraud and whether that injured anybody. But if a customer  
16 or a shareholder was injured by a misstatement of financial  
17 condition, that's not a claim that would belong to the  
18 debtors. That's a claim that would belong to the customers.  
19 Okay?

20 And the debtors have no ability or right, let alone  
21 ability, to pursue it for customers, nor does the committee.  
22 The committee's job is to pursue creditors' interest not  
23 with respect to individual claims, but as to the conduct of  
24 the case, how the business will be handled, et cetera.

25 So I know probably many of you think that you're

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1 claims so.

2 There were direct claims at least contemplating in  
3 the beginning, and I think that the unsecured creditors  
4 committee also previously referenced --

5 THE COURT: Okay.

6 MS. DIVITA: -- but only 60,000 people here have  
7 voted. So that's maybe a clarifying point. And I think  
8 that we're relying on these professionals to meet those  
9 assertions in regard to those direct claims and/or other  
10 claims.

11 THE COURT: Okay.

12 MS. DIVITA: That's all. Thank you, Your Honor.

13 THE COURT: All right. Is there anybody else who  
14 wants to be heard? Okay.

15 I'm going to close the argument record then. I'll  
16 reserve decision. I have a lot of homework and prep to do  
17 to make rulings on these motions and to review the proposed  
18 order. It sounds like people are still reviewing, and I'm  
19 trying to decide on certain provisions.

20 Whatever is the version of the order that was sent  
21 to us this afternoon, I am going to work on. So if you make  
22 changes, make sure you are very clear as to which specific  
23 provisions they relate to so I don't get lost in looking at  
24 them tomorrow. But I will be working and making my own  
25 adjustments to kind of editorial provisions, and I may have

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other questions for you as I review the full scope of the extended order.

And perhaps we should resume at 2 o'clock tomorrow, at which point, I will read my rulings into the record and ask any remaining questions that I have about the order. Okay. Does that work?

MR. SLADE: Very good, Your Honor, thank you.

THE COURT: Okay.

MR. GOLDBERG: Your Honor, would you like us in person or by phone?

THE COURT: Let's do it by person for sure as to the Debtors, Binance, and the committee. Anybody else who want to be over here in person can be here in person, but has permission to be on the phone. Okay? I think the rest of you, it's useful to have you in one place if an issue comes up because you're already here, you can discuss it, and we can resolve it more quickly. When you're on the phone, it takes forever. Okay?

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

(Whereupon, the proceedings were concluded at 6:19 p.m.)

# CERTIFICATION

I, Sheila Orms, certify that the certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



Dated: March 9, 2023

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[agreed - answer]

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[heard - holders]

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[honor - immediately]

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[indication - injunction]

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[moelis - nature]

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[vgx - voyager]

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[voyager - way]

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1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Case No. 22-10943-mew  
4 - - - - - x  
5 In the Matter of:  
6  
7 VOYAGER DIGITAL HOLDINGS,  
8  
9 Debtor.  
10 - - - - - x  
11 United States Bankruptcy Court  
12 One Bowling Green  
13 New York, NY 10004  
14  
15 March 7, 2023  
16 2:10 PM  
17  
18  
19  
20  
21 B E F O R E :  
22 HON MICHAEL E. WILES  
23 U.S. BANKRUPTCY JUDGE  
24  
25 ECRO: F. FERGUSON

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HEARING re Court reading decision into the record.

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selfies uploaded, identifications, or bank statements, and bank account information. Any opted-out information would not be acquired by the purchaser in the transaction, and that notice will be provided by the Debtors at the Debtors' expense. The expense reimbursement start date for the Debtors, which was to begin on March 18, 2000 --

THE COURT: Wait a minute. Selfies? I couldn't write fast enough.

MS. OKIKE: Selfies, uploaded IDs. So driver's licenses, passports, other forms of identification.

THE COURT: Okay.

MS. OKIKE: Bank statements, and bank account information.

THE COURT: Okay.

MS. OKIKE: The expense reimbursement provision for the Debtor --

THE COURT: Social Security numbers?

MAN 1: Your Honor, that would be required (indiscernible).

THE COURT: Why? Just help me.

MAN 1: That is, along with names and addresses, an important part of identifying and establishing the basis for new customer chats should anyone elect to join the platform in the future.

THE COURT: But I cannot imagine a piece of

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PROCEEDINGS

THE COURT: All right. We're here for the resumption and hopefully completion of our confirmation hearing in the Voyager case. There were a few open issues. Number one, I see that the names of the independent directors have been filed and disclosed.

MS. OKIKE: Correct, Your Honor.

THE COURT: Is the representative of the Ad Hoc Equity Committee on the phone?

MS. MOYNIHAN: Yes, Your Honor. Kelly Moynihan from Patrick Townsend.

THE COURT: Are you pleased with the selection? Do you have any further objection to the people who've been selected and named?

MS. MOYNIHAN: No, Your Honor. No further objection. Thank you.

THE COURT: Very good. We had also left open a question of just how we were going to treat customer data and the transfers of data, particularly for customers who hadn't yet and may not ever become finance customers. Have we reached any agreements or resolutions of that point?

MS. OKIKE: Yes, Your Honor. Christine Okike of Kirkland and Ellis on behalf of the Debtors. I will read into the record the proposed resolution. So there will be a two-week period for customers to opt out of transferring

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information more quickly and easily given to you if a customer wants to do that than their Social Security number. Why you need that in advance I'm having trouble understanding.

MAN 1: There's a couple of reasons, Your Honor. You know, I think -- and really this, if I may explain all of these issues?

THE COURT: Yeah.

MAN 1: I think there's -- the customer data, just to set the context, Your Honor, is really at the heart of the transaction for Binance.US. When we agreed to pay the \$20 million purchase price, we didn't know how many customers would agree to join the Binance.US platform. And so the value of each individual customer's future actions on the platform are as unknown. The only known commodity that Voyager has to sell is the data, and that was at the heart of the deal.

So the information has, I think, three main value sources to Binance.US as a technology company that fundamentally depends upon data. One is the ability to simply reach out to a customer and market to them. Second, the information is valuable because whenever a customer onboards to the Binance.US platform -- and they may not do that today. They may do that well down the road. The cryptocurrency markets are extremely volatile, as we all

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1 know. There's bear markets like we're in now, and there's  
2 bull markets. And when there's a bull market, many people  
3 join the platform that may not have had any intention to do  
4 so in the bear market.

5 Having the KYC information mitigates the actual  
6 monetary cost that Binance.US would have to pay  
7 affirmatively to conduct the KYC each time someone joins.  
8 And so having the Social Security number and other  
9 information that is not part of this excluded information  
10 that Ms. Okike mentioned would be valuable to avoid that  
11 actual cash expense to Binance.US.

12 Third, as a technology company that uses data to  
13 enable and empower its operations, even if someone doesn't  
14 join the platform, the data that Voyager has about their  
15 past activities is very valuable in enabling Binance.US to  
16 market and conduct and enhance its operations going forward.  
17 So that is the source of the value for the transaction --

18 THE COURT: What does somebody's Social Security  
19 number have to do with that third point you just mentioned?

20 MAN 1: Well, it enables part of the modern  
21 marketing process, right? That -- as Your Honor knows,  
22 right, we've received tons of emails, tons of direct mail.  
23 That's -- we throw it all out. We delete it. But when  
24 there's more targeted marketing that can go someone based on  
25 knowledge of their circumstances and past transaction

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1 have suggested that the KYC information that you've gotten  
2 from the Debtors would somehow not be very good without the  
3 Social Security number. Or are you saying you're actually  
4 going to do -- use the Social Security numbers in advance to  
5 do KYC checks on everybody who might in the future become a  
6 customer?

7 MAN 1: Your Honor, my understanding from  
8 discussions with my client, and obviously there's a number  
9 of technical details here, is that, you know, Voyager's  
10 already done KYC checks on all of their customers of course,  
11 right? And so part of this transaction is to acquire that  
12 information and have the KYC platform for all of these  
13 customers in place, and that's a very valuable part of the  
14 transaction alone.

15 THE COURT: Okay. So whatever this information  
16 is, Voyager gives it to you. Can it be given to you without  
17 the Social Security number? Because it seems to me if  
18 somebody wants to be a customer -- if somebody elects not to  
19 let you have the Social Security number and then changes  
20 their mind, all you do is plug that into what you have. Or  
21 if, as you say, you want to go out and hire somebody to do  
22 an additional check, you would have -- you're certainly not  
23 going to be put at any great delay because somebody can give  
24 you the Social Security number in an instant.

25 MAN 1: Well, Your Honor, if I may actually

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1 history, that maximizes the ability to get someone in the  
2 door for a retail operation.

3 THE COURT: If somebody has already opted out of  
4 selfies, uploaded IDs, bank statements, and bank account,  
5 you would need that information if they later wanted to open  
6 an account, right?

7 MAN 1: Not necessarily, Your Honor. The first  
8 level of KYC that applies to most customers does not require  
9 that information.

10 THE COURT: You don't require that information  
11 yourself before the account can actually be up and  
12 functioning?

13 MAN 1: My understanding is that not all of that  
14 information is required in all cases. The --

15 THE COURT: And why is -- you know, if Voyager  
16 sent other information to you, why does the absence of a  
17 Social Security number disable the -- you know, your  
18 customer data in the way you've kind of suggested to me? I  
19 don't understand that.

20 MAN 1: Well, my understanding is that when a new  
21 customer joins, they would be providing their Social  
22 Security number at that time. And then Binance.US has to  
23 pay a third party provider to conduct the KYC in order to  
24 run the check on that person.

25 THE COURT: Okay, but -- so -- but you seem to

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1 express my personal experience, about a year ago when crypto  
2 markets were pretty hot before all of this, I actually tried  
3 to open an account. And I started doing it, and then I got  
4 busy and gave up because it took time and effort to go  
5 through. And I think part of the benefit of having this  
6 information in place at Binance.US is that it allows  
7 instantaneous KYC checks that have already been, you know,  
8 pre-done by Voyager and can be relied upon to some extent as  
9 well as avoiding the cost of a third-party service. And so  
10 --

11 THE COURT: But what I'm not understanding and  
12 you're not helping me with is you can have everything all  
13 set up, customer name, address, all that information that  
14 Voyager gives you. But the only thing if somebody elects  
15 within your two-week period not to let you have the Social  
16 Security number, all they would have to do is plug that  
17 remaining bit of information into the stuff that you have.  
18 I absolutely fail to understand why you need that  
19 information in advance.

20 MAN 1: Well --

21 THE COURT: It's information that a lot of people  
22 regard as very sensitive.

23 MAN 1: The -- that -- in completing the KYC check  
24 would come at cash expense to Binance.US. In addition, the  
25 delay that it takes and requirement for someone to go ahead

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1 and enter their Social Security number and then run that  
2 check, even if it's done relatively quickly, that delay,  
3 that extra step could leave to slippage and breakage in a  
4 colloquial sense and lose a customer.

5 THE COURT: Let me try it this way. If somebody  
6 has not given you this other information and you have their  
7 Social Security number, then they decide they want to be a  
8 customer, and they tell you that, do you have an additional  
9 know-your-customer check that you have to do at that time?

10 MAN 1: My understanding is that if we acquired  
11 all of the information with the exclusion of the information  
12 we've agreed to leave behind, we would have the KYC  
13 information in place for Voyager customers.

14 THE COURT: So you'd have it in place. So if you  
15 get all of that same information except for the Social  
16 Security number, and then somebody wants to be a customer,  
17 why do you have to do anything other than plug in the Social  
18 Security number? You keep telling me you have to do a new  
19 know-your-customer check. I don't understand that. If you  
20 have all the other information just not the Social Security  
21 number, what's the big deal?

22 MAN 1: I don't know if that would require a new  
23 expense. It would certainly involve requiring additional  
24 information from the customer, an additional step in the  
25 process, and that could lose customers. And that's part of

1 loud, that's nothing. That's absolutely nothing, right?  
2 And if what you're saying is, well, that's going to chase  
3 away people who have already in the first instance decided  
4 they don't want Binance to have their information but have  
5 later changed their minds, that seems preposterous to me.

6 MAN 1: The third category of information, Your  
7 Honor, is the data analytics part. And whether or not  
8 someone joins the platform, the data that Voyager has about  
9 their transaction history, and I know Social Security number  
10 would be relevant to that, will empower Binance.US' data  
11 analytics programs to enhance its own operations and  
12 maximize its own profitability.

13 THE COURT: How? Help me with that. What does  
14 having the Social Security number allow you to do in terms  
15 of that kind of data marketing that you couldn't do without  
16 the number if you have all the other information about the  
17 customer's name and past history, etcetera?

18 MAN 1: I think that specific question, Your  
19 Honor, to be fair, is a level of detail I'd have to speak to  
20 my client about.

21 THE COURT: Okay. I think -- I'm not convinced  
22 that you need the Social Security numbers, and you're going  
23 to have to convince me. Because we are here, based on your  
24 proposal, only talking about whoever would affirmatively opt  
25 out of these arrangements. And I -- as I said yesterday, I

1 the value for the Binance of the ease of getting people in  
2 the door in this transaction.

3 THE COURT: Adding their Social Security number  
4 would chase them away. I remind you that, you know, I'm  
5 mindful these are people who only are the people who have  
6 opted out of letting you have that information in the first  
7 place and who might've changed their minds and come back.  
8 Do you think they're going to be scared away because they  
9 have to enter a Social Security number? That seems  
10 ridiculous. Doesn't it? I'm trying to understand, but I'm  
11 not. You want the information, but I am absolutely at a  
12 loss as to why you need it and why it would involve any  
13 other expense to you. Please help me because maybe I'm just  
14 not understanding --

15 MAN 1: I think --

16 THE COURT: -- how this works. But what you're  
17 telling me doesn't help me at all.

18 MAN 1: Well, my understanding is it is relevant  
19 to the second category of expenses, the ease of bringing  
20 someone onto the system. In addition to that, it is  
21 relevant to the third category of value.

22 THE COURT: But in terms of the ease, if you have  
23 all the other information, the difference in ease is whether  
24 somebody's Social Security number is already there or  
25 whether they have to type in nine digits. For crying out

1 understand that there are some legitimate reasons why you  
2 want to have some information, and certainly some contact  
3 information, etcetera. But that doesn't necessarily mean  
4 there is good reason for you to have every bit of sensitive  
5 information about a customer at once, particularly if a  
6 customer objects and may not want to be a Binance customer.  
7 And so I am trying to balance those two. And I understand  
8 you push back on some of this information, but as to the  
9 Social Security numbers, what you've told me so far is  
10 pretty unconvincing. Okay.

11 MAN 1: Okay. Well, what I'd suggest, Your Honor,  
12 is we can proceed to address the other issues and I'll --

13 THE COURT: Okay.

14 MAN 1: -- confer with my client. Thank you.

15 THE COURT: Very good. Is it too much to hope  
16 that you might have had discussions with the governmental  
17 authorities on the exculpation disputes and resolved them?  
18 MS. OKIKE: Your Honor, that is too much to hope.  
19 We have had discussions.

20 THE COURT: Hope springs eternal.

21 MS. OKIKE: Your Honor, I would like to read the  
22 rest of the agreement with respect to the customer  
23 information just --

24 THE COURT: I'm sorry. Go ahead.

25 MS. OKIKE: -- on the record because it does

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change certain provisions in the APA. But then I'm happy to address the exculpation. So the expense reimbursement start date for the seller will be moved back from March 18, 2023 to April 1, 2023. If --

THE COURT: Okay.

MS. OKIKE: -- the purchaser is ready to close by April 1, 2023, assuming the closing conditions are satisfied or waived by them, and Voyager is not, including because Voyager declines to waive any closing conditions other than breaches or defaults by the purchaser, then Voyager will cease to have the expense reimbursement protection.

THE COURT: Okay.

MS. OKIKE: And the last point is that both parties acknowledge that the closing condition relating to entry and finalization of the APA order, so the prior order of Your Honor authorizing entry into the APA has been satisfied. And to its knowledge, there is no breach of the APA by the other party as of the date of the confirmation order.

THE COURT: Okay.

MS. OKIKE: So Your Honor, with respect to the exculpation, we have provided language to the various governmental entities. Honestly, I'm not sure where the various entities stand. I believe Texas may be okay with the proviso that we are proposing with respect to the

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propose, the plan contemplates certain rebalancing transactions and the completion of distributions of cryptocurrencies to Creditors. The exculpated parties shall have no liability for and are exculpated from any claim for fines, penalties, or damages based on their execution and completion of the rebalancing transactions and the distributions of cryptocurrencies to Creditors in the manner provided in the plan. For the avoidance of doubt, the foregoing paragraph reflects the fact that confirmation of the plan requires the exculpated parties to engage in certain conduct, and the fact that no regulatory authority has taken the position during the confirmation hearing that such conduct would violate applicable laws or regulations.

Nothing in this provision shall limit in any way the powers of any governmental unit to contend that any rebalancing transaction should be stopped or prevented, or that any other action contemplated by the plan should be enjoined or prevented from proceeding further. Nor does anything in this provision limit the enforcement of any future regulatory or court order that requires that such activities either cease or be modified or limit the penalties that may be applicable if such a future regulatory or court order is issued.

Similarly, nothing herein shall limit the authority of the Committee on foreign investment of the

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provisions in the confirmation order related to the governmental entities. And that proviso basically says provided further, and it goes through all the things that the order is not doing in terms of enjoining governmental entities. And then says provided further that nothing in this paragraph shall limit the exculpation of the exculpated parties set forth in -- and then we put the exculpation into the confirmation order. So it's as set forth in Paragraphs 61 to 62 of this order.

THE COURT: Let me read for you and for the government my own proposal, all right? I have to note I believe is narrower than the original plan proposed to which none of these governmental entities objected. I propose to say the following. To the fullest extent permissible under applicable law, and without affecting or limiting either the Debtor release or the third-party releases, and except as otherwise specified in the plan, no exculpated parties shall have or incur, and each exculpated party is hereby exculpated from any liability for damages based on the negotiation, execution, and implementation of any transactions approved by the Court. That's the standard language we have that essentially says Creditors, shareholders, you can't sue saying somebody did something stupid when I've already made a decision that they haven't.

In addition, this is back to the language I

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United States to bar any of the contemplated transactions. Nor does anything in this provision alter the terms of the plan regarding the compliance of the purchaser with the applicable laws in the unsupported jurisdictions before distributions of cryptocurrencies occur in those unsupported jurisdictions.

I think the language that I have just read is fairly narrow. And what it essentially says is, you know, I've got a plan in front of me. One of the things I'm supposed to consider is whether it's proposed in a means that is in compliance with law. I have a bunch of people, governmental authorities, who've done nothing except hint that maybe there's some issue, but nothing else. Nobody else made any other opposition.

And if and when I confirm the plan, people will be obligated to do what the plan says. They won't have a choice. And I think for a variety of reasons that I can say and that I can go into, they're entitled to the protection that I've just said and entitled to know that when they do what I compel them to do in between the time I do so and up until the time somebody else tells them they can't, they aren't going to be subject to some ex-post facto argument that, hey, we didn't tell you at the time even though we could've.

We didn't even make up our minds at the time, but

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1 guess what? You're liable for penalties, and that court  
2 order wasn't just approval of a plan. It was a sentence  
3 that you, with -- under no volition of your own, would have  
4 to do something that was going to subject you to some  
5 liability. I think that would be an absurd situation for  
6 anybody to be in, and I think that language is perfectly  
7 appropriate under the applicable authorities.

8 Do the governmental authorities on the phone  
9 object to the language I just read?

10 WOMAN 1: Your Honor, this \*(Indiscernible) from  
11 the State of Texas. I think that language is excellent.  
12 And subject to the deletion that's in paragraphs where we  
13 tried to craft such eloquent wording but didn't, I am fine  
14 with that wording. Thank you.

15 THE COURT: Okay.

16 MR. BARNEA: Your Honor, this is J.D. Barnea from  
17 the U.S. Attorney's Office. We were not able to get all of  
18 that language down. There may still be some concerns we  
19 have with it, but it's certainly an improvement over what  
20 we've seen, especially if it's combined with deleting the  
21 injunctive language that was in the proposed order  
22 previously. However, we still may have some concerns about  
23 it. I think we would need to see it written. If there's  
24 any way to send it around in writing, we'd appreciate the  
25 opportunity to take a look -- a closer look.

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1 be imposed. I assume what you meant is if there's a future  
2 decision by the government that tells -- gives us rules --

3 THE COURT: Yeah, and if there's a --

4 MR. SLADE: -- and if we violate those rules --

5 THE COURT: If there's an order saying stop doing  
6 this and you violate that order, I'm not exculpating you  
7 from that.

8 MR. SLADE: That's right, but they can impose  
9 penalties for the work that we did in reliance on the order  
10 before they --

11 THE COURT: Exactly.

12 MR. SLADE: -- made their decision.

13 THE COURT: Exactly.

14 MR. SLADE: Okay. We're on the same page. Thank  
15 you, Your Honor.

16 MR. AZMAN: Your Honor, Darren Azman for the  
17 Committee. I just have three minor comments. I don't mean  
18 nick the language. I just wanted to clarify something --

19 THE COURT: Well --

20 MR. AZMAN: -- given the importance of the issues.

21 THE COURT: -- we don't -- you know, everybody  
22 wants to look at (indiscernible) so let me just say that's  
23 what -- I proposed something along those lines recognizing  
24 that there may be little tweaks. But I think that  
25 everybody's got the substance of it.

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1 MS. CORDRY: And Your Honor, this is Karen Cordry.  
2 I represent a number of other states. We did not formally  
3 speak up yesterday because it seemed like the issues were  
4 being raised by other folks. I think the language you have  
5 there seems very appropriate. And I would note that this  
6 all came up with a proviso that was only introduced on March  
7 3rd before the -- on March 2nd before the SEC said anything.  
8 So we think what you have there does go a very long way  
9 towards dealing with our concerns while also protecting the  
10 (indiscernible) efforts of the people on the -- you know,  
11 who can try to put this plan together.

12 I don't think any of us meant to try to bring  
13 those kind of damages and so forth. So if those assurances  
14 are helpful, I think that's -- I think the language seems  
15 fine. Again, sort of like the United States, I look --  
16 didn't actually get every bit of it down, but it sounded  
17 appropriate as I was listening to it.

18 THE COURT: All right.

19 MR. SLADE: Your Honor, I have one thing.

20 THE COURT: Go ahead.

21 MR. SLADE: I apologize. Mike Slade for the  
22 Debtors.

23 THE COURT: Yep.

24 MR. SLADE: There was one sentence towards the end  
25 there where you said nothing limits the penalties that can

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1 MR. AZMAN: I'll keep my comment to just one point  
2 then --

3 THE COURT: Okay.

4 MR. AZMAN: -- just to make sure it's clear. So  
5 you mentioned that the exculpated parties could not be  
6 liable for fines, penalties, or damages. I think it needs  
7 to be more broader. It needs to be any civil or criminal  
8 liability. I don't think fines, penalties, or damages  
9 necessarily includes somebody going to jail over it.

10 THE COURT: Okay.

11 MR. BARNEA: Your Honor, this is J.D. Barnea  
12 again. It would certainly not be appropriate for this Court  
13 to enjoin a criminal prosecution of any person for any  
14 reason.

15 THE COURT: Well, if what you're saying is that  
16 having sat on the sidelines and said nothing to me to  
17 indicate that there's anything illegal about what these  
18 people are going to do, that you want to reserve the right  
19 to put somebody in jail for doing a rebalancing transaction  
20 that they will have no choice but to do under the order that  
21 I entered, then I disagree with you. I think the very  
22 suggestion offends me to no end. I can't believe that you  
23 would even take the position in front of me that you should  
24 have that right. It's preposterous. It's absolutely  
25 preposterous. If you think something's that illegal, speak

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up, but don't dare tell me that you kind of want to reserve that right to do that to somebody. Go ahead, Mr. Azman.

MR. AZMAN: Your Honor, this is not about hiding in the wings and hoping to arrest someone upon them taking some action. This is about the authority of a bankruptcy court to tell a criminal prosecutor that he's not allowed to do his job. We are not -- there is no intention here to ensnare people. We're not aware of anything specific that would be in that direction. It's simply that it's not appropriate for any court or any bankruptcy court to declare that someone is free from criminal prosecution.

If they commit a crime, they shall get prosecuted for it. If they have a defense that they were acting in reliance on a court order, that may well be an excellent defense, and perhaps that would be a reason not to prosecute them. But there's no authority that this court has to order a criminal prosecutor not to prosecute someone.

THE COURT: It's a defense to the extent that I say it's a defense, and that's what I'm doing. You know, I read the Government's paper, which essentially acknowledges that courts have held that people are entitled to qualified immunity for doing what they're approved to do, and especially what they're ordered to do under a court order. But to suggest that I should allow --

MR. AZMAN: Absolutely as an affirmative defense

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can't do this are belied completely by the fact that there are literally thousands, thousands of confirmed bankruptcy plans that have done exactly this with no objection by you. You know, you've gotten yourselves all stirred up because the Debtors overreached in what they wanted. And now you want to object to completely ordinary, reasonable provisions that are well-based in authority to which you haven't objected to any of the other bankruptcy cases that I have ever handled. So I think your position's preposterous. Go ahead, Mr. Morrissey.

MR. MORRISSEY: Good afternoon, Your Honor. Richard Morrissey for the U.S. Trustee. The U.S. Trustee will certainly review the Court's language and hopefully we can come to an understanding. I just wanted to make two points, Your Honor, about what the Debtors are seeking here with respect to exculpation. And again, I hope the language that Your Honor just read to us will be consistent with our view.

The U.S. Trustee believes that the exculpation provision as written in the plan in these cases was different from the corresponding provision in (Indiscernible). As a factual matter, my understanding, Your Honor, is that there weren't regulatory actions pending. And in addition, there were no temporal problems, which is to say that parties in interest were not worried

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in an enforcement proceeding, but not as a pre-determined bar by a bankruptcy court.

THE COURT: Okay. Please don't interrupt me in the middle of a sentence.

MR. AZMAN: I'm sorry about that, Your Honor.

THE COURT: What I was trying to say is the suggestion that I should be silent and just leave it for somebody else to decide whether my order has any such qualified effect, or what I myself intend my order to have as its effect, and what I'm telling people to do is ridiculous. People who will have to do what my order will compel them to do are entitled to know, okay? And they're entitled to clarity.

And some other court who doesn't know bankruptcy is entitled to know what I think people are being compelled to do, and what I think I am authorizing them to do, and what I am in effect, at least on an interim basis until somebody actually steps in and gets an order otherwise, I'm in effect saying by confirming this plan it is okay for you to do this, okay? And none of you have stepped forward to say otherwise.

So people are -- I think I'm the one that ought to be defining that, not some future court. And leaving it to some future court in complete uncertainty, I don't know how a bankruptcy case could function. And your arguments that I

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about what exculpated parties might do in the future outside of the Court's purview. And I think I raised this point yesterday. So we think it was a broader release. And Your Honor, another issue is -- that I did not raise --

MAN 2: (Indiscernible) --

MR. MORRISSEY: -- yesterday has to do with --

MAN 2: -- (Indiscernible). You did.

THE COURT: Who's talking -- whoever's talking on the phone needs to mute themselves because you're -- and wait until it's your turn to speak, okay?

MR. MORRISSEY: Thank you, Your Honor -- has to do with actions taken upon it by some counsel, which I think Your Honor used the word "defense" in speaking to Mr. Barnea before. I think that is certainly an affirmative defense in a future proceeding, but it's an issue as to whether that should be part of the ruling here.

THE COURT: All right. I'm not purporting in any way to modify to the extent to which reliance on the advice of counsel is or is not a defense for anybody. I'm simply saying that it's quite abundantly clear to everybody that the plan here contemplates rebalancing transactions and distributions of cryptocurrencies. Any governmental authority that thinks that those activities are illegal anyway is on notice of them and has had a full opportunity to come in and tell me why they are illegal, the Bankruptcy

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Code says I shouldn't confirm it if the plan is proposed by any means that would violate any law.

I absolutely have been and made clear from the beginning that I was ready to consider any actual objections that there was a violation of law. I don't have any. I have hints that somebody might think, for reasons that I couldn't quite explain completely, that the two aspects or one aspect of the sale of VGX and perhaps something to do with Binance.US' business operations might raise regulatory issues, but no idea if that means that the transaction cannot be actually accomplished.

And therefore, based on the actual record in front of me, no reason at all to think that what the plan calls for people to do would be illegal. And so when I make that determination and then any fact by confirming the plan leave people with no authority but to do those things that I have in effect found are okay, I think it's preposterous to suggest that somebody -- people who do it would be personally liable.

You know, the alternative is to tell the Government you had your chance, you didn't speak up. You know, this is what the Debtors were trying to do last week. Therefore, forever shut up, there's nothing illegal about this. I'm not going to do that. I have no intention of doing that. That to me would overstep what is reasonable

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And I think -- and I'm not trying to speak for the United States, but my sense is that that may be the kind of concern that is floating around there, is that the -- that's still -- I mean, it's not like we have been sitting here getting notices of every transaction that goes through in terms of the rebalancing and so forth. I have known basically from the terms that the overall rebalancing was illegal, but it is possible. And I think if we use the term "possible" that somebody could do something illegal in the context of that overall approved process. So I think that's sort of what's floating around out there.

THE COURT: Yeah. You know, I don't have a problem. I don't think anybody has a problem with that. Okay?

MS. CORDRY: Yep. So I think that's kind of where there was still the concern about.

THE COURT: Okay. All right. Everybody's going to want to see the language and make little tweaks. I don't -- I'm not in a position to be able to give it to everybody. I have one copy, which is the copy that I have for the purpose of making my decision right now.

MR. MORRISSEY: Your Honor, Richard Morrissey once again for the U.S. Trustee. I was going to raise an issue that's separate and apart from confirmation. I don't know if you wanted me to raise it now or wait until later in the

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here.

I wish, if the regulators had a problem, that they would've spoken up before me because I have absolutely no desire to set anybody on a course that raises any regulatory concerns. But for whatever reason, the governmental entities either were unwilling or unable to voice any opposition on those points. So if something happens, if they unlock their regulatory brakes and figure out that they have some objection, they can try to stop what's going on, I'm not going to prevent them from doing that. But the idea that they should also then be able to come in and claim any kind of liability for the people who have done what I've ordered them to do and the Government took no action to stop it just seems utterly ridiculous to me. Okay?

MR. MORRISSEY: Thank you, Your Honor.

MS. CORDRY: Your Honor, this is Karen Cordry again. If I could just say very quickly one point here which is that a typical exculpation provision does include in there in the language that the Debtor had written in another claim that we're exculpated from all of those sorts of causes of action. Unless there's a determination of actual fraud, willful misconduct, or gross negligence, which indicates that it's possible to have the basic transaction be approved, but they have some aspect of its being carried out constitute one of those problems.

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-- later today.

THE COURT: Well, I have a lengthy decision to dictate into the record, and last I heard I had a 5:00 deadline. Where do we stand on the 5:00 issue?

MAN 3: Your Honor, I haven't spoken with my client about it and whether we need more time than that. I hope not.

THE COURT: We obviously are going to -- because people are going to have to see, if nothing else, the other revisions that I have already told you I want to make to the confirmation order and this particular language. The idea that I can announce my decision and have an order in the next two hours and ten minutes is just not going to happen.

MAN 3: We'd like to keep things moving along, but what would Your Honor suggest?

THE COURT: I would suggest that people are going to want to -- once I finish my decision, which is going to take a while, people are going to want to see the order, and that you should extend it until 3:00 tomorrow. Okay.

MAN 3: Let me request that from my client. In the meantime, we could suggest perhaps sending the language around to the parties via email to the Debtors.

THE COURT: I don't know if anybody --

WOMAN 2: Your Honor, when the attorney for Binance speaks, he has to go near a microphone. Otherwise

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the people in Court Solutions can't hear him.

THE COURT: I don't think anybody has the language I just read except for me because I wrote it out for myself here. I don't -- it's not in anything else I've given to anybody else, so...

MAN 3: Correct.

THE COURT: Okay.

MAN 3: Thank you, Your Honor. All right.

MR. MORRISSEY: Your Honor, the issue I was going to raise just so it's not a mystery to the Court and the parties has to do with Rule 3020. The version I have of the proposed order, it's Paragraph 118, Waiver of Stay. Your Honor, the U.S. Trustee would oppose the waiver of the stay. We think that the 14-day stay should be part of the order, and that Rule 20 should be abided by. Thank you, Your Honor.

THE COURT: All right. I understand the Government's position. When is -- if I don't enter a stay, when is the effective date likely to occur at the earliest?

MR. GOLDBERG: Your Honor, Adam Goldberg for Binance.US. We would be working to bring the plan effective as quickly as possible.

THE COURT: Okay.

MR. GOLDBERG: I'd (indiscernible) for the Debtors for anything else.

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my decision with respect --

MS. SCHEUER: Your Honor, if I may just have one moment. I'm sorry, Your Honor. Therese Scheuer for the SEC. Your Honor, the SEC would also like to request the opportunity to review the changes to the order and Your Honor's proposed -- Your Honor's --

THE COURT: Understood.

MS. SCHEUER: -- exculpation language.

THE COURT: Understood.

MS. SCHEUER: Thank you, Your Honor.

THE COURT: Of course. I understand. All right. We are here to consider the proposed confirmation of the plan of reorganization of the Voyager Debtors, and also to consider some other motions that have been filed by Creditors. The plan contemplates a transaction that is subject to some strict deadlines, so I'm going to dictate my findings and conclusions into the record so that our timing does not unintentionally trigger any termination rights on the part of the proposed purchaser in the pending transaction.

I'm asking the Debtors to have a transcript of my rulings prepared as promptly as possible and to be submitted to chambers in Word format. The decision that I dictate today will explain my rulings and my findings, and we will endeavor to enter an order as soon as we can, reasonably can

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MS. OKIKE: Yes, Your Honor. I think -- Christine Okike for Kirkland and Ellis. We agree with that. I do think it's going to take, you know, some time, but we will be working expeditiously to effectuate the plan.

MR. KIRPALANI: Good afternoon, Your Honor. Susheel Kirpalani from Quinn Emanuel on behalf of the Special Committee of the Debtors. I just wanted to let the Court know, I'm sure you have your own way of wanting to announce things, but I wanted to confirm that Your Honor is aware, and if not I wanted to make Your Honor and all interested parties aware, that we have scaled back the releases.

THE COURT: I saw.

MR. KIRPALANI: And I've got even some additional line item nits to further scale it back because there were things in there --

THE COURT: Okay.

MR. KIRPALANI: -- that I missed. And so I could read those changes into the record, or I could do it any which way you'd like.

THE COURT: We'll final -- I saw an in-concept approve of what you've done, and we'll get the wordsmithing done as we enter the order.

MR. KIRPALANI: Okay. Thank you, Your Honor.

THE COURT: Okay. All right. I want to announce

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based on the rulings and findings. But once we receive the transcript, we will correct spelling, citations, inadvertent errors, and places where I may misspeak or where I may find that I was less clear than I would have liked during the course of my dictation. And that corrected decision will be entered as the actual official decision of the Court.

We had a lengthy hearing that began on Thursday, March 2 and continued through yesterday, Monday, March 6, and to some extent has continued for another hour's worth of argument today. We have had an unusually large number of participants in the hearing, including a large number of pro se parties who are Voyager accountholders.

I want to pause and thank the pro se parties for their participation and for the unusual amount of work and energy that they have put into following this case in comparison to how relatively smaller creditors tend to treat other cases that I have handled. I appreciate that they are not attorneys, and that they have labored under some significant disadvantages as a result. I tried wherever possible over the course of the hearing to give the pro se parties the chance to ask their questions even if at times we may have strayed somewhat from the issues that are strictly before the Court in this particular hearing.

Unfortunately, I did have to exclude one pro se party who refused to abide by my instructions and who was

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disrespectful in his conduct. But the pro se participants clearly have made a very significant effort to be helpful and to follow and to abide by the rules as I explained them, and I greatly appreciate the fact that they did so.

The primary issue before me in this hearing is the Debtors' request for a final approval of their Disclosure Statement and confirmation of their proposed Plan of Reorganization. The plan, as I said, generally speaking provides for a sale of customer accounts to Binance.US, although accountholders can elect not to become customers of Binance.US. The plan also includes a backup option in the event that the proposed deal with Binance.US does not close or otherwise has stopped from being completed.

The Debtors have argued that the proposed deal with Binance.US -- by the way, if I inadvertently say "Binance", I mean "Binance.US" whenever I make my comments here -- that the proposed deal with Binance.US will maximize the ability to make distributions to accountholders in the form of cryptocurrencies rather than cash. This may have tax benefits to the accountholders, although the tax issues apparently are not completely clear, and nobody has presented evidence to me or made legal submissions to me about the tax issues or tax benefits.

The Debtors have also argued that the proposed deal with Binance.US would permit more cryptocurrencies to

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Binance.US currently operates in a regulatory environment that can best be described as highly uncertain. There are firms that operate as cryptocurrency brokers or exchanges and have done so for several years without being subject to clearer and well-defined regulatory requirements. The regulators themselves cannot seem to agree as to whether cryptocurrencies are commodities, they may be subject to regulation by the CFTC, or whether they are securities that are subject to securities laws, or neither, or may in some cases one or the other, or even necessarily on what criteria should be applied in making a decision.

This uncertainty has persisted despite the fact that the cryptocurrency exchanges have been around for a number of years. The current regulatory environment can only be characterized as uncertain, but the future regulatory environment can only be characterized as, in my mind, virtually unknowable. There have been differing proposals in congress to adopt different types of regulatory regimes for cryptocurrency trading.

Meanwhile, the SEC has filed some actions against particular firms and with regard to particular cryptocurrencies, and those actions suggest that perhaps a wider regulatory assault may be forthcoming. The CFTC seems to have announced some positions that may be at odds with the SEC's views. But just how this will all sort itself

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be distributed in-kind than any of the available alternatives would provide. They have further argued that the Binance.US deal would limit the amounts of cryptocurrency sales that the Debtors would have to make, and thereby would reduce the extent to which sales by the Debtors might adversely affect market prices, particularly in the case of cryptocurrencies where normal trading volumes are not so robust as others.

The objections have focused on many things. Some objections have raised relatively common bankruptcy issues, such as objections to some of the releases that the Debtors have proposed. Other objections are focused more specifically on regulatory issues or on the wisdom of potential dealings with Binance.US.

Let me say at the outset and as background to my rulings that I cannot think of another case I have had that comes before me in quite a setting like this one does. I'm aware that there are some people who question the very concept of cryptocurrencies and the whole idea of cryptocurrency investment and trading. I note that no party in this case has taken such a position, and it's not for me to decide whether any particular investments are good ideas or not. But it certainly provides an unusual backdrop to this bankruptcy case.

I also am aware that Voyager operated and

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out, how the pending actions relating to cryptocurrencies will be decided, and just what future regulatory actions might involve, or how they will affect individual firms or the industry as a whole is very much unclear.

Complicating things further is the fact that Voyager operated and Binance.US continues to operate in an industry that has been the subject of some severe financial shocks over the past year. Many firms were adversely affected by the loan defaults of Three Arrows, including Voyager itself. The Three Arrows' defaults led to several bankruptcy filings across the country. The more recent and sudden collapse of FTX has reverberated even more throughout the industry and has also led to some financial problems at other firms.

Perhaps most worrisome for me are revelations of apparent misbehavior and misuse of customer assets at some firms. I certainly do not have all of the evidence as to what happened at FTX, and we will all have to wait until judgments can be entered in that case before we are sure exactly what happened. However, public statements by the persons currently handling the bankruptcy of FTX have so far indicated that there was an enormous disparity between the way that FTX actually operated and the way it actually used customer assets as opposed to what it had represented to its customers.

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1 I'm also aware of the examiner's report about the  
2 business conducted at Celsius and how the actual behavior  
3 and custody of customer assets at that firm may have  
4 differed from public statements as to how customer assets  
5 were being treated and custodied. Once again, I certainly  
6 do not have all the evidence as to what actually happened in  
7 Celsius, and we'll have to see what further developments  
8 there are in that case. But the examiner's report certainly  
9 raised the prospect of a disparity during the way that  
10 particular firm actually operated and the representations it  
11 made to its customers about how assets were handled.

12 Perhaps to some degree, those kinds of events and  
13 the fact that regulatory regimes have been so unclear go  
14 hand in hand with each other. That I don't know for sure.  
15 In this particular case, some accountholders and some other  
16 parties have referred me to newspapers, or magazine  
17 articles, or to a recent letter sent by a group of U.S.  
18 senators all raising questions and accusations about how  
19 Binance.US does business and how its affiliated companies do  
20 business.

21 Despite the questions that have been raised in  
22 this regard, however, I have to note that I have been  
23 offered absolutely no, I mean literally zero, no actual  
24 admissible evidence that would support an accusation that  
25 Binance.US is misusing customer assets or is engaged in any

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1 that the VTX token was one as to which some unspecified  
2 issue might exist.

3 The SEC also suggested that the Debtors should be  
4 required to prove that Binance.US is not operating as a  
5 securities broker without registering as such. Once again,  
6 the SEC did not actually take the position that Binance.US  
7 is operating as an unregistered and unlicensed securities  
8 broker. Instead, it just suggested that the Debtors had the  
9 burden to prove the negative without offering any evidence  
10 or even any reasons to think that Binance.US actually was  
11 doing anything for which it required further SEC  
12 registrations.

13 I questioned the SEC about these objections at the  
14 outset of this hearing, and to some extent I rebuked the SEC  
15 attorneys for the vagueness of their submission, although in  
16 fairness to them, I think they were just the messengers and  
17 not necessarily the architects of the message that they were  
18 sent to deliver to me. Although the SEC contended that the  
19 Debtors somehow how to prove a negative, that is that the  
20 Debtors were not violating securities laws and that  
21 Binance.US is not violating registration requirements for  
22 brokers.

23 Once again, the SEC confirmed that it was not  
24 affirmatively contending that the Debtors were doing  
25 anything wrong, nor that Binance.US was doing anything

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1 misbehavior of any kind at all. Instead, I am in the  
2 absolute unenviable position of having to make a ruling  
3 about the proposed transaction in the face of hearsay  
4 accusations of potential wrongdoing in an industry where  
5 other firms have apparently engaged in real wrongdoing.

6 Knowing that many people are raising questions,  
7 and certainly with no desire to put anybody's futures at  
8 stake, but with little or more accurately no evidence as to  
9 whether there was any good basis at all for any of the  
10 questions that have been raised about Binance.US. So with  
11 those observations to put things into context, let me turn  
12 to some of the actual objections that have been filed.

13 The first one that I will address is the objection  
14 filed by the Securities and Exchange Commission. The SEC  
15 has argued in its written objection that the Debtors cannot  
16 prove the feasibility of their proposed plan for two  
17 reasons. First, the SEC argued that in its view the Debtors  
18 had the burden to prove that the Debtors' own purchases and  
19 sales of cryptocurrencies would not constitute illegal  
20 purchases and sales of securities.

21 The objection did not take the position that any  
22 particular cryptocurrencies are securities or otherwise  
23 explain how or why the Debtors' activities, including their  
24 rebalancing activities, might be illegal, although their  
25 written objection did contain a vague footnote suggesting

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1 wrong. Nor did the SEC have any guidance to offer to any of  
2 us to suggest what it was that the Debtors allegedly were  
3 supposed to prove with respect to these issues, or how the  
4 Debtors could possibly prove what the SEC wanted them to  
5 prove without receiving any explanation at all from the SEC  
6 and suggest why the Debtors' activities or Binance.US'  
7 operations might raise legal issues.

8 Near the end of the hearing on Friday, the SEC  
9 asked to provide clarification of the SEC's legal position.  
10 It initially asked if it could state its position only to me  
11 on an in-camera basis, but I denied that request and ruled  
12 that, to the extent the SEC wanted to say something further  
13 about its objection, it ought to be stated in the public  
14 forum where all interested parties could hear and understand  
15 the SEC's position.

16 The SEC representatives then said the following on  
17 the record. First, we were told that the SEC staff believes  
18 that the VGX token has aspects of a security, but that the  
19 Commission itself has not taken any position on that  
20 subject. Second, we were told that the SEC staff believes  
21 that Binance.US is operating as a securities exchange  
22 without registering as such. Once again, the Commission  
23 itself has not taken any position on that subject.

24 Although the SEC offered these clarifications as  
25 to what the SEC staff apparently believes, it emphasized

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that only the Commission may take a formal position on behalf of the SEC, and that the views of the staff did not necessarily constitute or certainly did not constitute the official views of the SEC. Furthermore, although the SEC had obtained clearance to reveal the staff's contentions, the SEC confirmed that it was not authorized and did not intend to provide any evidence on these issues or even any further explanation as to the bases for whatever beliefs the SEC staff may have.

So to the extent that the SEC nevertheless contends that these issues are bars to the confirmation of the Debtors' plan, I am forced to disagree. In the first place, I reject the contention that the Court and the Debtors somehow were supposed to figure out for themselves just what it is that the SEC might argue about the VGX token, or about particular activities in which Binance.US might be engaged, as well as the reasons why those matters might have raised securities issues, and then somehow to offer evidence and legal argument to rebut them.

This bankruptcy case has been pending since July 2022. Customers and Creditors have been denied access to their assets for many months, and they deserve to have a resolution of this case. Bankruptcy cases also are very expensive, and each and every delay means that administrative expenses eat away at the recoveries that

Similarly, the SEC did not explain why it thought Binance.US might be operating as a securities broker. I do not know, for example, if there is one specific cryptocurrency token that may have been traded by Binance.US and that the SEC thinks was a security for which the relevant remedy might simply be to stop trading in that token, or whether the SEC has different theories. If we were to try to address the issues, we would have to guess just what the issues were and would not even have any idea if we were even discussing the right points.

I understand and appreciate that the SEC is limited in what it can say about potential enforcement actions, but I cannot conclude from this record that an enforcement action is even likely, let alone whether it is meritorious, or even the bases for any of the issues that an enforcement action might raise.

I also cannot determine, even if an action were meritorious, whether it would affect the transactions that I am being asked to approve. On this very point, for example, I asked the SEC's counsel at the outset of this hearing to explain what the consequences would be if Binance.US were to be found to have been acting as a non-registered broker/dealer. I asked if that would just mean that Binance.US might have to stop certain activities while it pursued a license, or if it would be that Binance.US would

Creditors may eventually receive.

I have a proposed Plan of Reorganization in front of me, and I have an obligation to make a ruling now as to whether it can be confirmed. I cannot simply put the entire case in an indeterminate and expensive deep freeze while regulators figure out whether they do or do not think there is any problem with the transactions that are being proposed.

As I said at the outset of the hearing, if a regulator believes there is a legal issue with respect to something that is proposed in front of me, I am more than anxious to hear an explanation and to consider that issue. I have no desire to approve anything that raises legal issues. But I expect a regulator not only to tell me that it has an actual objection if there is a legal issue, but also to tell me what the issue is and why it is an issue, that the other parties may address it and so that I may make a proper and well-considered ruling on the point.

Here, I don't know how any party could possibly be expected to address the SEC's comments with the limited guidance that the SEC has provided. The SEC has not explained by the VGX token in its mind should be regarded as a security or what aspects of a security it thinks it has leaving me only to guess as to what the arguments might have been.

have to shut down all of its activities. The SEC said it could not answer the question.

Notwithstanding that statement, the SEC took the position yesterday that the Debtor's disclosure statement allegedly was deficient because it did not more specifically predict and describe what the results of a regulatory action against Binance.US might be. As I said yesterday, I do not know how the Debtors could've been expected to be more specific about that question when the SEC itself told me it could not answer the question.

In addition, the SEC's argument on these points has all been phrased in terms of whether the Debtors can prove the feasibility of their proposed plan. Feasibility in bankruptcy parlance is a shorthand reference to the provisions of Section 1129(a)(11) of the Bankruptcy Code, which states that in order to confirm a plan, a court must find that the confirmation "is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor under the plan unless such liquidation or reorganization is proposed in the plan."

Here the only issues the SEC has raised are, A, whether one specific token, VGX's, is a security; and B, whether Binance.US needs to register as a securities broker. There is no reason why these issues affect feasibility of

the kind that is discussed in Section 1129(a)(11). As I've said, the SEC has been aware that the VGX token for some time it has not even reached a conclusion of its own as to whether it is a security, let alone taken any action to stop trading in the token.

In addition, even if there are problems with the sale or distribution of VGX, there's no reason why, to my knowledge, why that should interfere or impede or affect the remainder of what the Debtors are proposing. Similarly, even if Binance.US were to be told to stop its business entirely, the Debtors' plan in this case provides that what the parties have called a toggle option under which the Binance.US deal could be stopped and the Debtors would instead make distributions to the extent they could without using Binance.US.

There would have to be some practical changes as a result, and the recoveries that accountholders would receive would likely diminish, but the plan itself includes the toggle option. So there's no reason to think that the issues that the SEC has raised as to Binance.US would mean that the plan couldn't proceed or that it would need a further liquidation or reorganization of the kind that is not already contemplated by the plan. For that reason, the issues raised by the SEC do not really go to the feasibility of the plan as that term is used in Section 1129(a)(11) of

or any other party that could support a contention that Voyager is purchasing or selling any token that should be considered to be an unregistered security, or that Binance.US is engaged in any activity for which it is required to register as a broker dealer.

I therefore reject and overrule any contention that the transactions contemplated by the plan would be illegal, and any suggestion that for regulatory reasons the Debtors would be unable to complete their proposed liquidation. The Debtors have offered evidence that Binance.US has the operational and financial capability to perform its obligations and have not been given any evidence to suggest that Binance.US could not legally perform those obligations.

For similar reasons, I reject the contentions by the SEC and others to the effect that the Debtors allegedly did not offer sufficient disclosure about potential regulatory risks. The disclosure statement that was distributed included specific disclosures about regulatory issues faced in so-called unsupported jurisdictions where Binance.US does not have certain regulatory licenses.

It also stated that the Debtors' business is subject to an extensive and highly evolving regulatory landscape that involves significant uncertainties, that it is possible that governmental bodies might disagree as to

the Bankruptcy Code.

I appreciate that the SEC made some effort to tell me something about what the staff is thinking, but in the end it did not support the highly conditional objection that the SEC filed. This is a court. One of the requirements for confirmation of plan is that the plan has been proposed in good faith and not by any means forbidden by law. Obviously, I have no intention of approving anything that is illegal. As I said during the hearing, and I think I may be repeating myself now, I expect that if a regulator believes that what is being proposed in a plan would violate any applicable statute or regulation, that the regulator will bring that to my attention so the issue can be resolved.

The SEC and all other government agencies have had a full and fair opportunity to object here if they believe that the rebalancing transactions that are being proposed or the distributions of cryptocurrencies that are being contemplated are illegal in any way. Or if they're in violative of any statute, rule or regulation, they have not actually made any objection on those grounds. They have only vaguely hinted at issues that have not even been described in a manner that would permit the Court or the parties to address them.

I have to make decisions based on actual admissible evidence. I have no evidence here from the SEC

whether particular laws or regulations are applicable to the Debtors or to the contemplated transactions, that the Debtors could not predict whether regulators would take the position that additional regulatory approvals are required for the completion of the contemplated transactions, and could not guarantee that there would not be regulatory issues.

The disclosure statement also stated generally that consummation of the transactions might depend on obtaining approvals of some governmental units, and that failure to obtain those approvals could prevent or impose limitations or restrictions on the consummation of the transactions contemplated by the plan.

Voyager also disclosed all of the regulatory inquiries it had received from federal and state authorities, and nobody has contended to the contrary. Although I note that none of those inquiries related to the two issues that the SEC said that its staff had concerns about. The disclosure statement disclosed a subpoena from the SEC that Voyager had received in January 2022 relating to the Voyager rewards program and apparently to questions about whether Voyager needed to register as an investment company.

The disclosure statement revealed that the SEC had made a follow-up request for some financial statement

1 information and other internal documentation in July 2022,  
2 and that the CFTC had made inquiries and sent a subpoena in  
3 August and September 2022. And other state and federal  
4 inquiries are also described.

5 I do not believe that the disclosure statement,  
6 which was circulated in January 2023, needed to be any more  
7 specific than that, than what it said, particularly with  
8 regard to issues that SEC itself did not identify until  
9 March 2023, and that the SEC itself has not been able to  
10 explain in anything other than an extremely conclusory form.

11 A number of questions have also been raised about  
12 the extent to which accountholders would be protected if  
13 they were to become customers of Binance.US. These  
14 objections have been posed by the SEC, the Office of the  
15 United States Trustee, the State of Texas, and the State of  
16 New York. Nobody suggests that the Debtors had information  
17 that they were hiding from anyone or that the Debtors had  
18 and failed to disclose. Nobody has contended that the  
19 Debtors made any misrepresentations as to the Debtors' own  
20 conclusions about Binance.US.

21 Instead, the objecting parties have suggested that  
22 the Debtors should have obtained or should obtain different  
23 or more complete or better assurances from Binance.US as to  
24 how it handles and will handle customer assets, and then  
25 have argued that the prior disclosures supposedly were

1 mean, in effect, that the Debtors would have to stop their  
2 due diligence inquiries once a disclosure statement had been  
3 approved for fear that the prior disclosures would  
4 immediately be rendered deficient and that the entire  
5 expensive process would have to start over again to bring  
6 everything forward to what the Debtors had more recently  
7 discovered. That would be an absurd result.

8 I do not find anything deficient in what the  
9 disclosure statement actually said. First, the disclosure  
10 statement revealed that cryptocurrencies would be  
11 transferred to Binance.US only as and when they were to be  
12 distributed to customers, and that until such time as the  
13 distributions were completed, Binance.US would receive and  
14 hold the cryptocurrencies "solely in a custodial capacity in  
15 trust and solely for the benefit of accountholders who each  
16 open an account on the Binance.US platform."

17 Second, Pages 34 to 36 of the disclosure statement  
18 revealed that the Debtors had sought and obtained various  
19 assurances from Binance.US, including that Binance.US had  
20 the financial resources to complete the proposed  
21 transaction, that Binance.US maintains 100 percent reserves  
22 for its customers' digital assets, and had substantial  
23 capital remaining even if all customers were to withdraw all  
24 of their digital assets, that Binance.US does not lend any  
25 of its customers' assets or offer margin products on its

1 inadequate because they did not already anticipate or  
2 include the results of these additional discussions or  
3 assurances that the objecting parties think the Debtors  
4 should obtain.

5 Although these objections have been framed as  
6 complaints about the disclosures that were included in the  
7 disclosure statement, I do not believe that is an accurate  
8 way to characterize them. As I said during the hearing, it  
9 is more accurate to say that these are substantive questions  
10 masquerading as disclosure issues. They are substantive  
11 complaints about what the Debtors have done or should be  
12 doing to assure themselves of a lack of problems before the  
13 transaction closes rather than proper objections to the  
14 disclosures that the Debtors already made.

15 The Debtors have made clear that their due  
16 diligence as to Binance.US does business is a constant  
17 ongoing project, and that the Debtors will continue to ask  
18 questions and to seek assurances as issues are raised. We  
19 would all be horrified if the Debtors did not do so. It is  
20 simply wrong for various parties to suggest that the January  
21 23, 2023 disclosure statement was somehow inadequate because  
22 it did not describe all of the follow-up conversations that  
23 had not yet taken place, or all of the follow-up assurances  
24 that had not yet been received by the Debtors.

25 If I were to impose such a standard, it would

1 platform, that customer assets transferred to Binance.US  
2 would be held by Binance.US pursuant to its standard digital  
3 asset wallet infrastructure, which is stored on Amazon Web  
4 Services servers located in Northern Virginia and Tokyo, and  
5 that Binance.US has various security protocols in place to  
6 ensure the safe storage of customer assets, and that those  
7 security protocols have achieved various third-party expert  
8 certifications attesting to their compliance with industry  
9 standards.

10 During the hearing, the Debtors also described  
11 other requests for information that they had made and other  
12 assurances they had sought. That included testimony that  
13 Binance.US had been asked to provide and had provided a  
14 sworn statement as to certain of its business practices. At  
15 my request, the Debtors obtained the consent of Binance.US  
16 to offer that sworn certificate as evidence of the diligence  
17 the Debtors had conducted and as evidence of the bases for  
18 the conclusions the Debtors had reached.

19 The certificate was admitted into evidence and  
20 filed on the docket so that all parties could see it. It is  
21 dated February 28, 2023, and it states that Binance.US holds  
22 digital assets deposited by its customers solely in a  
23 custodial capacity and on a one-to-one reserve basis, that  
24 Binance.US segregates the customer assets from the company's  
25 digital assets on its general ledger, that only employees of

1 Binance.US are able to move or withdraw customer assets,  
2 that Binance.US does not lend or rehypothecate customer  
3 assets, and that Binance.US maintains security protocols and  
4 procedures that are reviewed by independent parties, and  
5 that comply with various applicable standards.

6 This evidence does not satisfy everyone. It's  
7 apparent that there are some objectors who are worried about  
8 news reports and who would prefer to have nothing to do with  
9 Binance.US. During cross-examination, more than a few  
10 objectors pointed out that FTX had also made representations  
11 to the Debtors, and that those statements turned out to be  
12 false. Though in fairness, the witnesses have testified  
13 that they have ramped up their investigations and increased  
14 the information and assurances that they have sought from  
15 Binance.US in light of what happened with FTX.

16 I do not mean to cast dispersions on Binance.US  
17 when I say this, but it is of course true that in the end we  
18 can never be 100 percent sure that a representation is true  
19 and correct even when made under oath. At the same time,  
20 however, we do not usually presume that people are lying and  
21 we certainly do not usually presume that buyers are  
22 dishonest, particularly absence of any evidence suggesting  
23 that they actually are.

24 My role as the bankruptcy judge is, in the first  
25 instance here, to determine whether the proposed plan

1 (Recess)

2 THE COURT: Please be seated. All right. I had  
3 just explained why I believe that the evidence requires me  
4 to conclude that the Debtors are exercising reasonable  
5 business judgement in electing to proceed with the  
6 transaction.

7 That does not mean that I thought that every  
8 detail of the proposed transaction was necessary or even  
9 appropriate. During the course of the hearing, I asked the  
10 Debtors and Binance U.S. to consider certain changes to the  
11 terms of their proposed arrangement that I believed would  
12 not affect the primary business terms but that would help to  
13 address other concerns and questions that had been raised.

14 First, after our hearing in January, the Binance  
15 U.S. deal was clarified to say, and my order entered in  
16 January clearly says that from the time when assets are  
17 transferred to Binance U.S. until the time they are  
18 distributed to accountholders, Binance U.S. would be acting  
19 as a distribution agent for Voyager. Accordingly, during  
20 that time, Binance U.S. would only be a nominal owner of the  
21 assets. They would not have any beneficial interest in the  
22 assets during that distribution period, and instead, the  
23 assets would be held strictly in trust for and in a custody  
24 arrangement for either the debtors or the accountholders  
25 respectively. Binance U.S. has also previously confirmed

1 complies with the provisions of the bankruptcy code itself.  
2 As to the business details and the business wisdom of the  
3 arrangement, and as to the selection of the proposed  
4 purchaser, my role is more limited. So long as the  
5 provisions of the plan comply with the bankruptcy code  
6 requirements, my authority is limited to a determination of  
7 whether the Debtor's desire to do this particular  
8 transaction is within the scope of the Debtors' reasonable  
9 business judgment. See *In re Borders Group, Inc.*, 453 B.R.  
10 477, 482 (Bankr. S.D.N.Y. 2011) and cases cited therein.

11 Furthermore, as I've said several times, in  
12 considering that issue, I am required to make decisions  
13 based on the evidence that is submitted to me. I understand  
14 the point of view of the skeptics here. Given what has  
15 happened in this industry, I cannot help but be worried  
16 myself about how any firm might handle customer assets in  
17 this business. But the plan fact of the matter is that I  
18 have been given absolutely no admissible evidence, literally  
19 none, that would support a conclusion that Binance.US will  
20 misuse customer assets or that it cannot be trusted. The  
21 evidence that is actually before me requires me to conclude  
22 that the Debtors are exercising reasonable business judgment  
23 in electing to proceed with the transaction.

24 I'm going to continue in a moment, but we're going  
25 to take a brief break while I give my throat a brief rest.

1 that customers may immediately withdraw assets from Binance  
2 U.S. if they choose to do so.

3 During the hearing, I suggested that it might make  
4 sense if what I have referred to as the distribution period,  
5 the period during which Binance is deemed to have no  
6 beneficial interest in the assets, were to continue for some  
7 time after a customer's account is credited so that  
8 customers who wanted to make immediate withdrawals could do  
9 so without sacrificing any of the protections that the  
10 provisions of the order might provide to them in that  
11 regard.

12 Binance U.S. has not only agreed to that suggested  
13 change, I think the parties have gone further. They have  
14 agreed with the Debtor to include language in the plan  
15 documents to the effect that the assets transferred to  
16 Binance by Voyager, if I'm reading it correct, will always  
17 be held in strict trust and in custody for customers and  
18 that Binance will not have beneficial interest of those  
19 assets. That language now appears in Article 4, Section C  
20 of the plan.

21 Second, I asked that the parties consider a change  
22 to the proposed treatment of accountholders who live in what  
23 the parties have called unsupported jurisdictions, which are  
24 four states in which Binance does not have the licenses  
25 necessary to distribute cryptocurrencies to customers. I

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noted that under the parties' contract, customers in other states who do not become customers of Binance U.S. or who would just prefer cash distributions for other reasons will be given cash distributions at the end of a three-month period. I understand and will address below the issues that have been raised regarding the fact that customers in most states will be able to receive distributions in the form of cryptocurrencies whereas customers in the unsupported jurisdictions will have to wait six months to see if Binance U.S. can obtain the needed approvals and will only be able to get cash distributions if Binance U.S. cannot get such approvals.

The question that I raised with the parties, however, is as to accountholders in unsupported jurisdictions who do not want to become Binance U.S. customers and who would prefer to take a cash distribution. Customers in most states can get -- excuse me. Under the original proposal, customers in most states could get such cash distributions after three months. And so I raised the question as to why customers in unsupported jurisdictions should not have that same opportunity. I suggested that it could be made available by giving customers a simple opt-out form by which they could elect to take cash distributions and thereby would be entitled to them at the completion of the same three-month period. Binance U.S. agreed to this

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contact information in the first instance with the limitation of the transfer of other more sensitive information about bank accounts, social security numbers, et cetera, to such time as a particular customer actually elects to be a Binance U.S. customer.

And in response to my concerns, the parties have tentatively agreed that customers will have a two-week opt-out period in which time they would be able to notify the parties and to opt out of any transfer of any selfies or uploaded IDs or bank statements or bank account information, thereby giving them the chance to prevent the transfer of that information to Binance.

In my mind, there's still one open issue, which is as to the transfer of social security numbers and whether customers within that same two-week opt-out period should have the right to prevent the transfer of their social security numbers automatically to Binance U.S.

Binance U.S. has suggested to me that somehow this information is important to making it -- putting Binance U.S. into a position where it could readily open a customer account if a customer wishes to do so. But I don't really understand if Binance has all the other information just how hard it would be for a customer at that time simply to enter a social security number. Yes.

MR. GOLDBERG: Your Honor, I can provide

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proposed change and the change has been incorporated in the plan documents.

Third, I know that the parties' agreement includes provisions requiring the transfer of customer data from Voyager to Binance U.S. Voyager has argued that its customer arrangements permit the transfer of that data. No party has offered me any contrary evidence or contention.

Under the parties' agreement as I understand it, the only customer data that has been transferred so far is as to customers who have already made elections to be customers of Binance U.S. However, if there is an approval of the transaction, there would be a wholesale transfer to Binance U.S. of all remaining customer data, which would mean that Binance U.S. would receive all customer data for all Voyager customers even if those customers elect not to do business with Binance U.S.

I asked whether these terms could be modified to provide further protections with regard to the sensitive customer information of customers who might choose not to be Binance customers and who may not wish Binance U.S. to have their information.

I recognize that one of the things that Binance U.S. is buying here is the right to market itself to Voyager's customers. I asked, however, whether the transfer of customer data to Binance could be limited to customer

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additional information on this point now or at any other time.

THE COURT: Go ahead.

MR. GOLDBERG: Thank you, Your Honor. I apologize for interrupting, but I thought this was a good time.

For the record, Adam Goldberg of Latham & Watkins on behalf of Binance U.S.

I've consulted with my client on this issue and can provide additional details of why the social security numbers are of great value to this transaction.

There are essentially two levels of KYC checks pursuant to the FinCEN CIP rule, that is the Financial Crimes Enforcement Network, which is a Bureau of the Department of Treasury Customer Identification Program.

The first level is basic KYC, and that requires a name, date of birth, address and social security number. The second is advanced. And that requires selfies, identification documents, and other document uploads. Binance U.S. has agreed to forego the transfer of the information that goes to the advanced KYC, which is of higher long-term value, but is prepared to do so based on Your Honor's comments.

The social security networks allow Binance U.S. to clear all of Voyager's customers through the basic level one KYC at no additional cost. And that KYC clearance would

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1 remain in place forever, indefinitely, under the current  
2 regulations.

3 If we don't have that information, the KYC data  
4 that would be otherwise acquired, not including social  
5 security numbers as Your Honor has requested, that would  
6 become stale and would eventually require, should a customer  
7 later elect to join the Binance U.S. platform, for example  
8 at a time of a bull run in the crypto markets and they  
9 change their mind, the cost at present could be up to \$20  
10 per customer. And recall there are a million customers in  
11 this case, perhaps without coincidence, of the alignment of  
12 those figures.

13 So without the social security numbers, Binance  
14 U.S. would essentially be acquiring a mailing list for  
15 customer marketing, which is of far inferior value relative  
16 to the ability to pre-clear for KYC. So we respectfully  
17 submit, Your Honor, that the transfer of social security  
18 numbers is permitted under the policy and that that transfer  
19 is supported by the Debtor's business judgement, the value  
20 to the estate, and the overwhelming creditor vote.

21 THE COURT: Thank you. That's very helpful. But  
22 I think you said at an earlier time during the hearing that  
23 if a customer has a Binance account and closes it, that the  
24 customer can elect to have Binance wipe out all of the data  
25 it has for that customer. Is that right?

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1 that, they are welcome to do so. And that's the business  
2 agreement that was reached among the parties.

3 So they could join the platform, never buy or sell  
4 anything, and then cancel out and tell you to get rid of the  
5 information.

6 MR. GOLDBERG: That's right, Your Honor.

7 THE COURT: All right. Thanks. I appreciate the  
8 explanation.

9 MR. GOLDBERG: Thank you.

10 THE COURT: All right. To get back to my  
11 decision, I have raised issues about the information that  
12 would be transferred and as to abilities of any customers to  
13 control the information that's been transferred. Binance  
14 U.S. has agreed that there will be a two-week period during  
15 which customers can opt out of the transfer of selfies,  
16 uploaded IDs, bank statements, and bank account information.  
17 I have raised the question about the transfer of social  
18 security numbers and Binance has now given me a better  
19 explanation of why it wants that information.

20 I have a lingering concern that, as I just said to  
21 counsel, the testimony is that customers who actually open  
22 Binance accounts can close them immediately and can  
23 immediately tell Binance to dispose of all the information  
24 that Binance has obtained about them, whereas customers who  
25 don't open accounts can only exercise that right if they

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1 MR. GOLDBERG: Yes. That's right, Your Honor.  
2 There are a few requirements, such as that there is no  
3 pending trades on the account. But yes, the customer can  
4 delete their account.

5 THE COURT: So what about for people who haven't  
6 become Binance customers? Do they have an equivalent point  
7 at which they can ask you to wipe out the information that  
8 you have on them?

9 MR. GOLDBERG: They would have to -- under the  
10 current system, they would have to join, create an account,  
11 and then they could delete that account.

12 THE COURT: Seems like an odd step to require  
13 people to go through. Is there some point at which -- I  
14 understand you want a marketing period. Isn't there some  
15 point at which you can say that those people who haven't  
16 joined you in six months can have the same option to tell  
17 you to delete their information as somebody who had already  
18 joined you would have?

19 MR. GOLDBERG: Your Honor, I completely understand  
20 your logic here. And it has some resonance. But I think  
21 the context of this deal is really from a retail  
22 perspective. We want the ability to welcome a customer at  
23 any time. And that's the value of this transaction. We  
24 want a customer to be able to come into the store and see  
25 the platform. And if they want to delete themselves after

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1 first go through the process of opening account and never  
2 even putting anything in it and then giving that same  
3 direction to Binance. I'm still not a thousand percent  
4 convinced that there isn't some way to give Binance the  
5 marketing opportunity it wants here while eventually making  
6 it easier for customers to have their data expunged, whether  
7 at the end of a six-month period or some other period. And  
8 I will leave open the possibility of such a provision in the  
9 final order and just ask Binance, since I have only just  
10 this very instant raised this question, if it will yet take  
11 that additional question from the pestering judge back to  
12 its client and find out if there's something we can do.  
13 Okay?

14 MR. GOLDBERG: Thank you, Your Honor.

15 THE COURT: By the way, do we have confirmation  
16 that we don't have a 5:00 deadline? Because at this pace, I  
17 won't even be finished with my decision by then.

18 MR. GOLDBERG: Your Honor, Binance U.S. agrees to  
19 your request of 3:00 p.m. tomorrow.

20 THE COURT: Thank you very much. All right.

21 I think that these proposed modifications, subject  
22 to answering that one issue that I have just left, clears up  
23 many of the objections and issues that came up during the  
24 hearing. There are still some other issues that I will now  
25 proceed to discuss.

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1 The Office of the United States Trustee raised  
 2 some other objections to the disclosure statement. One  
 3 objection was their contention that the disclosure statement  
 4 was not clear as to who would hold cryptocurrencies and in  
 5 what capacities. I actually think the disclosure statement  
 6 was clear on that point. It said, as I noted above, that  
 7 cryptocurrencies would only be transferred to Binance U.S.  
 8 as and when they would be distributed to account holders,  
 9 that until the distributions were complete, Binance U.S.  
 10 would only have a nominal and not a beneficial interest in  
 11 the assets to be transferred, and that all such assets would  
 12 be held in custody and in trust either for the Debtor's or  
 13 for the account holders as applicable.

14 I believe that these disclosures were sufficient.  
 15 And, as I have described above, the parties have actually  
 16 agreed to additional language to provide further assurances  
 17 to customers in this regard.

18 The SEC complained that the Debtors did not  
 19 disclose or that there are meaningful economic benefits to  
 20 the Binance U.S. transaction apart from the \$20 million that  
 21 Binance would pay -- Binance U.S. would pay in excess of the  
 22 cryptocurrencies being transferred. I am going to overrule  
 23 this objection.

24 The liquidation analysis that was attached to the  
 25 disclosure statement included projections as to what

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1 statement was insufficient because it did not make  
 2 sufficient disclosures about certain features of the Binance  
 3 U.S. terms of use. However, I note that the disclosure  
 4 statement contains many direct links to those terms of use  
 5 and all of the arguments about provisions that Texas  
 6 believes customer should know about are taken directly from  
 7 the terms of use to which the customers were directed. This  
 8 is not an argument about actual disclosures and about actual  
 9 information available to customers so much as it is a  
 10 contention made in hindsight that the Debtors should have  
 11 put greater emphasis on particular provisions that Texas at  
 12 this stage thinks are important and that the Debtor should  
 13 have highlighted them somehow more prominently in the  
 14 disclosure statement instead of making available by  
 15 referring customers to the places where they could be found.

16 I do not find this to be a reason to reject the  
 17 disclosure statement or a basis on which to decide that the  
 18 disclosure statement was not adequate and sufficient. I  
 19 must note that the State of Texas reviewed the proposed  
 20 disclosure statement before I gave preliminary approval to  
 21 it in January 2023 and that the State of Texas filed some  
 22 objections and comments at that time and that in those  
 23 objections, Texas did not ask for any further disclosures  
 24 about the Binance U.S. terms of use. That just supports my  
 25 conclusion that this is not really a complaint about

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1 creditors' recoveries would be under the Binance U.S.  
 2 proposal, under the alternative toggle proposal, and under a  
 3 Chapter 7 liquidation. It stated that for various reasons  
 4 that were explained in the footnotes, the Debtors believe  
 5 that the Binance proposal would make approximately \$90  
 6 million more available for distribution, resulting in  
 7 approximately five percent greater recoveries for creditors  
 8 when compared to the toggle option and about a 14 percent  
 9 increase when compared to a possible Chapter 7 liquidation.  
 10 I think those calculations were sufficient to disclose what  
 11 the Debtors believed as to the benefits of the Binance U.S.  
 12 proposal.

13 Now, during the hearing, there were many questions  
 14 about these calculations. The Debtors testified that their  
 15 current estimates are that the Binance deal will produce  
 16 approximately \$100 million more in distributable assets than  
 17 the so-called toggle plan would provide. The Debtors  
 18 explained the assumptions that underlie those calculations,  
 19 and of course many of them are based on assumptions of what  
 20 might happen in the market under certain conditions, and  
 21 therefore they are not guarantees by any means. But I did  
 22 find the explanations and testimony to be reasonable and  
 23 credible. And I note that no contrary evidence was  
 24 presented.

25 The State of Texas contended that the disclosure

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1 something that was material and that had to be disclosed or  
 2 highlighted so much as it is a kind of belated decision by  
 3 one party that maybe something could have been given greater  
 4 emphasis. But if I were to apply that standard to every  
 5 disclosure statement that I ever see, I'm not sure any of  
 6 them would ever pass.

7 Texas has also complained that the disclosure  
 8 statement allegedly did not disclose the potential effects  
 9 that a preference lawsuit by Alameda could have on creditor  
 10 recoveries. However, the figures quoted in the objection as  
 11 to how much recoveries would be affected were taken from  
 12 Exhibit C to the disclosure statement itself, at Page 198 of  
 13 140, ECF Document 863.

14 During argument, Texas contended that the  
 15 information was too hard to find, but I note that the  
 16 information was added to the disclosure statement after  
 17 there was discussion of the point in January 2023. And at  
 18 that time, I approved the addition of the information at  
 19 exactly the place where it ultimately appears. To my  
 20 recollection, no party complained at that time that it  
 21 should be placed elsewhere.

22 Texas has also complained that the disclosures  
 23 about creditors' recoveries -- complained in its written  
 24 objection, I should say, that the disclosures about  
 25 creditors' recoveries might suggest that recoveries under

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the plan could be less than they would be in a Chapter 7 liquidation. I don't think Texas is actually continuing to press this objection. But just for completeness in the record, I will describe it and describe the reasons why I think it has been withdrawn.

The problem with the written objection is that it was based on an apples to oranges comparison. More specifically, Texas compared what the plan recoveries would be if Alameda has a very large, \$400 million administrative claim against the estate compared to what the Chapter 7 recoveries would be if Alameda does not have such a claim.

The truth, however, is that if Alameda has a large administrative claim, it would have the same claim in both the plan in Chapter 7 liquidation contexts and would have the same proportionate impact on the recoveries in both contexts. So it therefore would not affect the Debtor's conclusion that the plan recoveries will be better than recoveries in Chapter 7 would be.

A number of parties have also objected to the releases that have been proposed in the plan. Some of these objections are based on misconceptions as to exactly how the releases work. Just to be clear, the Debtors have proposed to release some claims that the Debtors themselves otherwise would be able to pursue or that the estate would be able to pursue. Some other parties, Binance U.S. itself for

releases here. There is a separate issue regarding the exculpation provisions of the plan that I will discuss in a moment, but there are no non-consensual third-party releases.

There are also challenges to some of the settlements and releases of the Debtor's own claims that are included in the plan. The United States Trustee filed an objection stating that the released party and releasing party definitions should not include the winddown debtors. My understanding is that that change has been made and that this particular objection is moot.

The Debtors have also proposed a settlement of claims against the Debtors' CEO, Mr. Ehrlich, and a former chief financial officer, Mr. Psaropoulos. The Debtors offered evidence that two independent directors had been in charge of the investigation of claims against certain insiders, that the special committee hired outside counsel, the Quinn Emanuel firm, to assist in that investigation, that the special committee had concluded that the only claims against insiders that were worth pursuing were claims against Mr. Ehrlich and Mr. Psaropoulos relating to the Three Arrows loans, that the special committee further concluded that those claims would be subject to various defenses and that the Debtors did not believe and that the directors, excuse me, did not believe that the claims were

example, and the Debtor's officers and directors, have agreed to release claims that they might own against the Debtors and a long list of other parties.

In addition, creditors were given the opportunity, and shareholders, to elect to grant releases, or in bankruptcy terms, to opt in to releases if they chose to do so. However, the forms that were sent to creditors made clear that nobody was obligated to opt in and that the choice was strictly voluntary.

Many bankruptcy plans provide and there is case authority for the proposition that an affirmative vote in favor of a plan is itself a consent to the grant of releases that are set forth in the plan. But the plan in this case does not say that. Instead, the plan here provides that no creditor or shareholder has released any claims that are owned by that person or entity unless that person has affirmatively granted such a release by executing the opt-out release form.

I believe that this disposes of the objection filed by the Federal Trade Commission and quote relevant portions of the objections posed by the United States Trustee and by certain customers, including Mr. Newsom and Warren, Mr. Hendershott, Mr. Jones, and Mr. (indiscernible). They objected to the approval of non-consensual third-party releases, but there are no non-consensual third-party

slam dunks, that the committee had investigated -- special committee had investigated the officers' resources and that the proposed settlements would provide for payments that represent a significant portion of the officers' available assets, that the Debtors would release other claims against the two officer but would not actually release claims relating to the Three Arrows loans and instead would only agree that any further recoveries on the Debtor's claims as to those loans would come from insurance proceeds and not from the individual assets of the settling defendants.

The Debtors also reserve their rights to undo a transaction by which Voyager allegedly paid as much as \$10 million just before its bankruptcy filing for an additional \$10 million of director and officer liability coverage.

When considering a settlement such as this, the applicable Second Circuit authority makes clear that my role is to determine whether the Debtors' decision to settle was a reasonable one after considering a number of factors.

In this case, consistent with the applicable caselaw, I have considered the nature of the claims that would have been asserted, the legal defenses that could have been asserted, including the business judgement defense, the testimony about additional defenses that could have been asserted under the terms of certain exculpatory language in the Debtor's bylaws or other governing documents, the

benefits of the proposed settlement, testimony that the settlement was the result of arm's length bargaining, the testimony about the size of the settlement payments in relation to the settling parties' resources, the fact that the settlements preserve the Debtor's rights to pursue the Three Arrows claim further, though further recoveries on such claims would be limited to insurance proceeds, the competency and experience of the counsel retained by the special committee, and the support for the settlement by the official committee of unsecured creditors. See Iridium Operating LLC v. Official Committee of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007), citations omitted.

I conclude after considering the relevant factors that the settlement with Mr. Ehrlich and Mr. Psaropoulos is a reasonable one and should be approved. I understand that this is very disappointing to some of the pro se parties who have appeared, a number of whom expressed a strong resentment towards the two settling parties and who expressed a strong desire to pursue them more vigorously and to demand a higher percentage of their net worth as a part of any settlement. I sympathize with their frustrations, but the only actual evidence I have on these relevant points is the evidence that I have described. And I am forced to conclude from that evidence that the settlement is in fact a

won't allow it.

The plan also proposed to release all of the released parties from any claim of any kind that the Debtors might have against those released parties. And the phrase goes on and on. "Based on or relating to or in any manner arising from in whole or in part the Debtors...their capital structure, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of or the transactions giving rise to any claim or interest that is treated in the plan, the business or contractual arrangements between any debtor and any released party, the Debtor's out-of-court restructuring efforts, intercompany transactions between or among a debtor and another debtor, or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the effective date but with an exclusion for actual fraud, willful misconduct, or gross negligence."

The evidence before me, however, did not suggest that the Debtors or the special committee had done any investigation or made any careful consideration of all of the types of claims that would be covered by this sweeping language. I believe Mr. Kirpalani acknowledged that much during oral argument yesterday.

As I said yesterday, this is not a release that is tailored to claims that have actually been renewed and

reasonable one.

The releases that the Debtors proposed to give were not limited to the releases to be granted as part of the settlement with Mr. Ehrlich and Mr. Psaropoulos. Instead, the Debtors also proposed to grant broad release of claims that the debtors might have against a number of other parties. The parties who would be the beneficiaries of those releases included the Official Committee of Unsecured Creditors and its members together with a long list of released professionals which appeared to include all of the law firms and other advisors in these cases, plus all "released Voyager employees", a term which was defined as "all directors, officers, and persons employed by each of the Debtors and their affiliates serving in such capacity on or after the petition date but before the effective date."

The scope of the releases that the Debtors proposed to give to such persons was extremely broad. The releases proposed to free all released parties from all cause of action, known or unknown, that the Debtors could have asserted in their own right "or on behalf of the holder of any claim." I really do not understand this latter phrase at all. If it is somehow intended to mean that a third party's own claim would be released on the theory that the Debtor somehow could have asserted it in some kind of representative capacity, it is too vague and excessive and I

passed by the Debtor. Instead, it is a release that is deliberately as broad and all-encompassing as possible untethered to any actual review of many of the claims that would be subject to the release.

I therefore do not believe that the evidence before me justifies and warrants the full scope of those releases as they were proposed, that the Debtors have since proposed to modify the terms of the proposed releases so that they will be limited to new defined term language matters that the special committee actually investigated. I may have to look at some of that language myself and will possibly have tweaks to it in the final confirmation order. But in concept, I think that complies with the comments that I made yesterday or my rulings today and that it will be acceptable.

I want to pause to reemphasize a point that came up several times during the hearing. A number of accountholders or shareholders complained during the hearing that they felt that they had been misled as to Voyager's financial condition. If a customer or shareholder believes he or she was misled or that he or she took actions that he or she otherwise would not have taken and suffered damages as a result based on any claim of misrepresentation of Voyager's financial condition, claims based on those injuries would belong to the customers or shareholders.

1 They would not belong to the Debtors or the estate.

2 The Debtor's proposed releases would release  
3 claims that the Debtors were injured due to mismanagement or  
4 bad decisions by officers or employees. The claims for  
5 injuries directly suffered by customers or shareholders,  
6 injuries that were not just derivative of injuries directly  
7 suffered by the Debtors are not affected.

8 The Office of the United States Trustee also  
9 objected to the scope of the proposed exculpation provision  
10 in the plan. Broadly speaking, that provision states that  
11 certain parties do not have liability for certain  
12 transactions and actions that occurred during the course of  
13 the bankruptcy case or that will occur in the implementation  
14 of a confirmed plan.

15 It is routine that bankruptcy plans contain  
16 provisions that state that fiduciaries and other parties do  
17 not incur liability by having engaged in transactions that  
18 the court has approved and having taken actions that the  
19 court has directed them to take.

20 In this case, the version of the plan that was  
21 circulated to creditors and other parties-in-interest in  
22 January, Docket Number 852, included a proposed exculpation  
23 provision that was fairly broad. It stated in relevant part  
24 that exculpated parties would have no liability or anything  
25 they had done during the course of the bankruptcy cases that

1 (7th Cir. 2008) approving a plan provision that exculpated  
2 an entity that funded a plan from liability arising out of  
3 or in connection with the confirmation of a plan, except for  
4 willful misconduct.

5 In re Granite Broadcasting Corp., 369 B.R. 120,  
6 139 (Bankr. S.D.N.Y. 2007), approving an exculpation  
7 provision that was limited to conduct during the bankruptcy  
8 case and noting that the effect of the provision is to  
9 require that any claims in connection with the bankruptcy  
10 case be raised in the case and not saved for future  
11 litigation.

12 My reasoning in the Aegean case has been approved  
13 and adopted by other courts in other cases. See e.g. In re  
14 Latam Airlines Group S.A., 2022 Bankr. LEXIS 1725 (Bankr.  
15 S.D.N.Y. June 18, 2022), In re In re Murray Metallurgical  
16 Coal Holdings, 623 B.R. 444 (Bankr. S.D. Ohio 2021). Such  
17 provisions are proper to protect those who are authorized  
18 and who may be directed by the confirmation of a plan to  
19 carry out the terms of the plan. See In re Ditech Holding  
20 Corp., 2021 Bankr. LEXIS 2274 (Bankr. S.D.N.Y. Aug. 20,  
21 2021).

22 In this case, the Debtors and the United States  
23 Trustee apparently had discussions, and my understanding is  
24 that they had tentatively agreed that the proposed  
25 exculpation language in the plan and confirmation order

1 -- or anything that they would do in the course of  
2 administering the plan and further stated that they would be  
3 deemed to be in compliance with all applicable laws  
4 regarding not only the solicitation of votes, but the  
5 distribution of considerations pursuant to the plan. And  
6 therefore, an account of those distributions would not be  
7 liable at any time for violation of any applicable law,  
8 rule, or regulation governing the solicitation of  
9 acceptances or rejections of the plan or such distributions  
10 made pursuant to the plan.

11 I have previously issued a decision as to what I  
12 regard as the proper scope of an exculpation provision and  
13 the legal justifications for it. See In re Aegean Marine  
14 Petroleum Network Inc., 599 B.R. 717 (Bankr. S.D.N.Y. 2019).

15 As I noted in Aegean, exculpation provisions are  
16 to some extent based on the theory that court-supervised  
17 fiduciaries are entitled to qualified immunity for their  
18 actions. However, a proper exculpation provision is also a  
19 protection for court-supervised and court-approved  
20 transactions. As I noted there, parties should not be  
21 liable for doing things that a court authorizes them to do  
22 and that a court decides are reasonable and appropriate  
23 things to do and in many instances that a court may direct  
24 them to do. See e.g. Airadigm Communications Inc. v. FFDD  
25 (In re Airadigm Communications Inc.), 519 F.3d 640, 655-657

1 would be scaled back to be more in the lines of what I  
2 ordered in the Aegean case. This became a much bigger  
3 issue, however, when at the end of last week, the Debtors  
4 filed revisions to their proposed confirmation order that  
5 included a number of paragraphs and additions to paragraphs  
6 that could have been read as barring all federal and state  
7 governmental entities and any other parties at any time from  
8 making any assertion of any kind that the Debtors, Binance  
9 U.S. or their representatives had done anything of any kind  
10 that violates any federal or state law or regulation.

11 It is not my intention to approve anything of that  
12 breadth, and I believe I made that clear as soon as the  
13 issue came up yesterday.

14 As we discussed the issue yesterday, however, the  
15 parties circled back to the proposed exculpation provisions.  
16 And certain governmental entities who previously had taken  
17 no position whatsoever and made no objection whatsoever to  
18 the original exculpation provisions suddenly took the  
19 position that as a matter of law, no exculpation provision  
20 of any kind can be granted insofar as it would relate to any  
21 federal or state statute or regulation.

22 As somebody put it during argument yesterday, the  
23 government's position was that any officers or directors or  
24 entities who will implement a confirmed plan just have to  
25 take their chances as to whether the government might

1 contend that what they're doing is illegal and even as to  
2 whether the government might seek to punish them for doing  
3 not only what I had authorized, but what I had directed them  
4 to do as a matter of the confirmed plan.

5 Frankly, I think this position by the government  
6 is wholly unreasonable and is based on a serious  
7 misunderstanding of just what it means when a court confirms  
8 a plan of reorganization and the legal reasons for the  
9 exculpation.

10 The approval of a plan of reorganization does not  
11 just give a debtor an option to proceed with what the plan  
12 provides. Instead, Section 1142(a)(1) of the Bankruptcy  
13 Code states that "The debtor and any entity organized or to  
14 be organized for the purpose of carrying out the plan shall  
15 carry out the plan and shall comply with any orders of the  
16 court." 11 U.S. Code § 1142(a)(1).

17 Section 1142 thereby imposes an affirmative  
18 statutory obligation on the debtors, other entities, and  
19 their personnel to do what the plan contemplates. In  
20 effect, the confirmation order acts as a court order that  
21 the plan be carried out. In this case, confirmation of the  
22 plan will require the debtors, Binance U.S. and their  
23 respective personnel and representatives, to complete the  
24 rebalancing transactions that the plan contemplates and to  
25 make the distributions of cryptocurrencies that the plan

1 the government those same people and entities might then be  
2 liable for fines, sanctions, damages, or other liabilities  
3 just for doing what my confirmation order affirmatively  
4 obligates them to do. And the government contends that this  
5 daunting prospect of future liability should hang over the  
6 heads of the parties and their personnel even though the  
7 government itself has had every opportunity to identify any  
8 legal issues that are posed by the transactions and is not  
9 prepared today to say that there is anything wrongful about  
10 what we are currently contemplating.

11 That position is absurd. If the government really  
12 wants to litigate the legality of the proposed transaction,  
13 it has been free to do so and should have done so during  
14 this hearing. Similarly, if the government truly wishes for  
15 me to make a decision today as to whether the transactions  
16 are or are not legal and to make that binding, then I will  
17 do so. But if I have to do that based on the evidence that  
18 has actually been offered to me and if I were to have to  
19 make that decision today, I would have no choice but to  
20 conclude that the transactions are perfectly legal because  
21 nobody has offered any evidence to the contrary to me.  
22 We're not attempting to do that to the government, although  
23 I think maybe the Debtors were attempting to do that by the  
24 proposals they made at the end of last week.

25 We're not trying to restrict the SEC or any other

1 contemplates. Once in confirm the plan, they will have no  
2 choice but to do so.

3 Here, all of the relevant governmental entities  
4 have been on notice of the proposed transactions. They had  
5 every opportunity to tell me if they believed that anything  
6 contemplated by the plan would violate any applicable  
7 statute, rule, or regulation. Four states have taken the  
8 position that Binance U.S. cannot open customer accounts in  
9 those states without additional approvals, and the plan  
10 specifically takes account of those objections and that  
11 fact. No other regulators have contended during the  
12 confirmation hearing that there is anything illegal in what  
13 the plan contemplates. As noted above, the SEC has hinted  
14 vaguely that it thinks there might be issues with the  
15 Debtor's sales of VGX and/or with some unspecified aspect of  
16 Binance U.S.'s business. But the SEC has explicitly stopped  
17 short of contending that anything actually is illegal and  
18 has repeatedly declined to offer evidence or to take a more  
19 firm position on these points.

20 In short, what the government is requesting is  
21 that I enter a confirmation order that will have the effect  
22 under Section 1142 of the Code of compelling employees,  
23 officers, professionals, and entities to do the rebalancing  
24 transactions that the plan contemplates and to make the  
25 distributions that the plan requires while in the view of

1 governmental entity's ability to argue in the future that  
2 the transactions that we are authorizing and directing  
3 should be stopped or prevented from going further for  
4 regulatory reasons of any kind.

5 However, it is entirely appropriate that I ensure  
6 that in the meantime, that the people and entities who will  
7 be directed and required by my confirmation order to  
8 complete the transactions contemplated by the plan will not  
9 themselves face liability for having already done things  
10 that I required them to do and that the government elected  
11 not to challenge at the time that requirement was imposed.

12 I do agree that a modification of the original  
13 exculpation provision is appropriate, and I am prepared to  
14 hold that the exculpation provision should be modified to  
15 say something along the lines of the following, recognizing  
16 that there will be some inevitable further wordsmithing and  
17 that the proposed order will reflect that wordsmithing.  
18 What I have in mind is language to the following effect.

19 To the fullest extent permissible under applicable  
20 law and without affecting or limiting either the debtor  
21 release or the third-party release and except as otherwise  
22 specified in the plan, no exculpated party shall have or  
23 incur and each exculpated party is hereby exculpated from  
24 any liability for damages based on the negotiation,  
25 execution, and implementation of any transactions approved

1 by the Bankruptcy Court. That's the standard part of the  
2 language that essentially just says that if you have pursued  
3 a transaction that I have approved, you can't be sued later  
4 by somebody saying it was unreasonable. Any claims about  
5 the reasonableness of the transaction should have been made  
6 to me.

7 The proposed language would continue, in addition,  
8 the plan contemplates certain rebalancing transactions and  
9 the completion of distributions of cryptocurrencies to  
10 creditors. The exculpated party shall have no liability for  
11 and are exculpated from any claim for fines, penalties,  
12 damages, or other liabilities based on their execution and  
13 completion of the rebalancing transaction and the  
14 distributions of cryptocurrencies to creditors in the manner  
15 provided in the plan.

16 For the avoidance of doubt, the foregoing  
17 paragraph reflects the fact that the confirmation of the  
18 plan requires the exculpated parties to engage in certain  
19 conduct and the fact that no regulatory authority has taken  
20 the position during the confirmation hearing that such  
21 conduct actually would violate applicable laws or  
22 regulations. Nothing in this provision shall limit in any  
23 way the powers of any governmental unit to contend that any  
24 rebalancing transaction should be stopped or prevented or  
25 that any other action contemplated by the plan should be

1 I think most of the arguments that the government  
2 has made in that regard are complete red herrings. They  
3 pose reasons and explanations and legal justifications for  
4 what I am doing that are absolutely not the actual legal  
5 justifications for what I am doing and then rebut those  
6 irrelevant purported legal justifications.

7 The actual authorities on which I have relied,  
8 including my own Aegean decision and the decisions that I  
9 cited in there are not even discussed in the objections and  
10 supplemental submissions that the government authorities  
11 made to me.

12 I am not barring the government from trying to  
13 stop transactions from occurring. I am not barring any  
14 regulatory contention at all. I am simply saying that when  
15 the government has declined to argue that the rebalancing  
16 transaction that the plan contemplates are legal and/or the  
17 government has declined to argue that the distributions of  
18 cryptocurrencies to creditors that the plan contemplates,  
19 either through Binance, or by Voyager if the so-called  
20 toggle plan is pursued, are illegal in any way, that  
21 individuals who entities who upon confirmation will be  
22 required to engage in those activities are entitled to know  
23 that I am not thereby sentencing them to an ex post facto  
24 contention or finding that they have unknowingly and  
25 unwittingly and involuntarily incurred statutory or

1 enjoined or prevented from proceeding further, nor does  
2 anything in this provision limit the enforcement of any  
3 future regulatory or court order that requires that such  
4 activities either cease or be modified, nor does anything  
5 limit the penalties that might be applicable if such a  
6 future regulatory order is issued and violated. Similarly,  
7 nothing herein shall limit the authority of the committee on  
8 foreign investment of the United States to bar any of the  
9 contemplated transactions, nor does anything in this  
10 provision alter the terms of the plan regarding the  
11 compliance of the purchaser with applicable laws in the  
12 unsupported jurisdictions before distributions of  
13 cryptocurrencies occur in those unsupported jurisdictions.

14 This morning when this language was discussed,  
15 somebody asked if we could add a typical exclusion for  
16 liabilities that reflect actual fraud or willful misconduct.  
17 I don't think anybody objects to the addition of such an  
18 exclusion.

19 As I understand it, the government has argued that  
20 even an exculpation provision of this kind somehow amounts  
21 to a third party release that offends the principles set  
22 forth in Judge McMahon's decision in the Purdue Pharma case  
23 or that it otherwise represents an impermissible effort to  
24 interfere with the discretion of regulatory authorities or  
25 otherwise exceeds my jurisdiction.

1 regulatory liabilities for doing what I have ordered that  
2 they can do and what my confirmation order compels them to  
3 do. That is fully consistent with ordinary bankruptcy  
4 practice with the authorities that I have cited above and  
5 with basic principles of equity and estoppel. It is a fair  
6 and proper consequence of the government's own unwillingness  
7 or inability to challenge the legality of the contemplated  
8 transactions during the hearing that I have held and of the  
9 fact that I am entering an order that as a statutory matter  
10 not only approves those transactions, but actually requires  
11 them to be carried out.

12 I note that the government itself has conceded in  
13 the supplemental papers that it filed that many courts have  
14 considered participants in bankruptcy proceedings to be  
15 protected by a species of qualified immunity for undertaking  
16 transactions specifically approved by the bankruptcy court.  
17 I think that in effect that is all that I am doing here.  
18 And I am not by any means preventing the enforcement of any  
19 law or regulation. Also, I am not stopping any regulatory  
20 body from stepping in and attempting to enjoin any act or  
21 transaction on any applicable regulatory ground. If the SEC  
22 or any other party believes tomorrow that it has grounds to  
23 go to court to enjoin further steps in the completion of  
24 this transaction, it is entitled to do so. I am not barring  
25 any such thing. I am simply saying that if we get six weeks

1 down the road and then the SEC decides to take action, that  
2 in fairness to the people who have spent six weeks doing  
3 what I have compelled them to do, those people cannot have  
4 liabilities and sanctions and penalties imposed upon them.

5 I also have a suggestion by the government both  
6 today and in the papers that I should simply say nothing  
7 about these issues and that if somebody is entitled to  
8 immunity of any kind for doing what I have ordered them to  
9 do, well, they can just raise that sometime in the future in  
10 some other regulatory context and we can just guess as to  
11 whether another court might agree with me or whether another  
12 court might agree that I even intended to grant such freedom  
13 to such people and that otherwise those people should just  
14 be left at risk as to what a future court might decide.

15 I don't see how that makes any sense at all. If  
16 the whole idea here is that I am directing something that  
17 gives rise to qualified immunity, I should be the one that  
18 says what the scope of that immunity is. Not only does it  
19 make sense for me as the court that's making the order to  
20 give that guidance and to make that decision, the people who  
21 are actually going to be required to do what I am compelling  
22 are entitled to know that that's what I am doing, and they  
23 are entitled to know that when they do what I have told them  
24 to do, it is not subject to the risk that, as I said, that  
25 they are being involuntarily sentenced to some sanctions for

1 customers in 48 states where Binance has the required  
2 licenses may receive cryptocurrency distributions relatively  
3 quickly but that Binance and the Debtors cannot legally do  
4 the same thing in New York. Accordingly, customers in New  
5 York would have to wait until such time as Binance may  
6 obtain the necessary approvals in New York. Under the plan,  
7 if such approvals are not obtained within six months, the  
8 New York customers will receive cash distributions instead  
9 of distributions that include cryptocurrencies.

10 Curiously, although the State of New York and the  
11 State of Texas have filed objections, it does not appear  
12 that a single New Yorker accountholder has objected on this  
13 ground, and perhaps only one Texas accountholder. This  
14 perhaps raises a standing issue as to the State of New York,  
15 but I do not believe I need to consider that question  
16 because I believe that in any event, the objection does not  
17 have merit.

18 New York has asserted that the plan unfairly  
19 discriminates between customers in New York and customers in  
20 other states. Unfair discrimination technically is not  
21 really the right way to describe the objection. Section  
22 1129(b) of the Bankruptcy Code provides that a plan may be  
23 confirmed even if not all classes have voted to accept it so  
24 long as certain conditions are met. One of those conditions  
25 is that the plan does not discriminate unfairly with respect

1 having done so. So in that respect, I think the  
2 government's suggestion is completely off-base.

3 I also note that the government has taken very --  
4 have made very broad-ranged accusations that somehow this is  
5 completely beyond my jurisdiction and completely unusual and  
6 completely beyond my authority. I think it's completely  
7 within my authority for the reasons that I have cited. And  
8 I also note that that contention by the government is belied  
9 by the literally thousands of confirmed bankruptcy plans  
10 over the past more than 20 years I am sure that have  
11 included similar exculpation provisions without any  
12 complaint whatsoever by any of these same governmental  
13 authorities. In fact, I have approved similar provisions in  
14 my time as a bankruptcy judge and recall no objections to  
15 them of the kind that the governmental authorities have  
16 raised over the past two days.

17 I also have an objection by the State of New York  
18 to the effect that the plan allegedly provides for an unfair  
19 discrimination in the treatment of New York customers as  
20 opposed to customers in other states. The State of Texas  
21 has made a similar objection. It appears though that the  
22 Debtors and Binance U.S. have resolved a similar issue as to  
23 Vermont and possibly as to Hawaii. In any event, the State  
24 of Hawaii has not pressed any objection before me during  
25 this hearing. The gist of the New York objection is that

1 to each class of claim or interest that is impaired under  
2 and has not accepted the plan. Here, the relevant class is  
3 Class Three, which is made up of accountholders. That class  
4 has overwhelmingly voted to accept the plan.

5 I think what the state regulators really mean to  
6 argue is that the plan allegedly does not provide the same  
7 treatment to all members of Class Three as is required by  
8 Section 1123(a)(4) of the Bankruptcy Code.

9 I think there may have been a basis for this  
10 objection insofar as it related to the treatment of  
11 accountholders who chose not to receive cryptocurrencies and  
12 who instead wished to take cash distributions. The plan as  
13 proposed would have allowed most customers to receive cash  
14 once three months had passed and they had not affirmatively  
15 elected to be customers of Binance. Customers in the  
16 unsupported jurisdictions, however, would have had to wait  
17 six months while Binance tried to work things out with  
18 regulators even if they did not want to be Binance U.S.  
19 customers and even if they wanted cash. Binance, however,  
20 as I have noted, has agreed to change this provision and now  
21 the treatment of creditors who want cash is exactly the same  
22 in all states.

23 I do not otherwise believe that the objection is  
24 correct. It is quite clear that the Debtors and Binance  
25 U.S. would like to make in-kind distributions to all



customers in all states. It is not the terms of the plan that prevent the Debtors and Binance from doing so, it is the different regulatory requirements and licenses in the different states that account for any different treatment that may occur. Or to put it another way, the plan provides in essence that the Debtors will make in-kind distributions to customers as soon as they become customers of Binance and as soon as the applicable rules and regulations in a given state permit such distributions.

However, we are not free to ignore the fact that in certain states, that cannot be accomplished as readily as in others. That does not mean that the plan is providing for different treatment of different customers, it just means that the plan itself does not have the power to sweep away the different regulations that apply in different states and does not have the power to grant licenses to Voyager and/or Binance that they do not already have.

Every customer's initial distribution rights will be determined on the effective date -- excuse me, on the same date. The different regulatory regimes in different states may mean that some customers receive distributions on different dates or in different forms, but the Debtors cannot do anything about that. The only solution to the problem New York has raised would be to force everyone in the entire country to delay their distributions until such

being distributed.

Similarly here, the Debtors cannot solve for the fact that cryptocurrency prices inevitably will fluctuate. The distributions that are calculated for creditors will be done on the same day and on the same basis. However, some creditors will have disputed claims and will not receive distributions until disputes are resolved. Other creditors may face delays due to regulatory issues or simply due to delays in their own submission and processing of paperwork needed to open the Binance account. It is just inevitable that some customers will actually receive distributions on different dates and that market values on those dates may fluctuate, but that does not amount to an unequal treatment proposed by the plan. I therefore overrule the objections as to the plan's treatment of customers in unsupported jurisdictions.

There were also objections that were filed as to the identity of the proposed plan administrator, Mr. Paul Hage. Many of the objections suggested that the job should not go to anyone associated with the Official Committee of Unsecured Creditors or their individual members apparently because a number of accountholders are not happy with the Committee's decisions and its work.

Mr. Hage testified about his qualifications and answered questions about his work in this case and also

time as the necessary approvals are in place, if ever, to make distributions to New York customers. That would not make any sense and it is not required by any provision of the Bankruptcy Code, and the State of New York acknowledged during argument yesterday that it is not requesting such a result.

At one point I believe one of the unsupported jurisdictions argued that cryptocurrency prices can vary over time so the value of the consideration that customers receive may be different when the customers actually receive it. But that often happens under bankruptcy plans.

In the American Airlines case, for example, creditors were entitled to receive stock as distributions on their allowed claims. There were many disputed claims, however. And the people who held those claims only received stock as and when their claims were allowed.

In the Meantime, the stock price changed, sometimes very significantly. But there was no way for the debtors to control for those price changes and no practical way for any debtor to ensure that the stock that was reserved and later distributed would have the same value on every distribution date. The creditors received the same amounts of stock, which is all that the Bankruptcy Code required, and as a practical matter, the only thing that the bankruptcy could require when property other than cash is

whether he has any conflicts of interest that would prevent him from serving as the plan administrator. He testified that he was the personal attorney to an individual who was a member of the Unsecured Creditors' Committee and that at the outset of the case he gave some advice to committee members as to how they could organize the process by which they selected a law firm to act as counsel to the committee.

A number of customers postulated that the individual who Mr. Hage represented was a close friend of Mr. Ehrlich, the CEO of the Debtors, and that this had improperly influenced the Unsecured Creditors' Committee in considering the settlement with Mr. Ehrlich that is embodied in the plan.

However, Mr. Hage testified credibly that the relevant committee member was a large customer of Voyager whose friendly relationship with Mr. Ehrlich ended when Voyager shut down its platform. Mr. Hage further testified that the relevant committee member actually spoke out against the proposed settlement when this was presented for the committees' review and that he ultimately abstained from voting after the votes of other committee members had already made clear that the creditors' committee approved of the settlement terms.

I do not believe that the evidence supports the contention that Mr. Hage's limited connections to this

committee member gave rise to conflicts of interest or that in the real world they would affect his work.

There were objections as to whether Mr. Hage should be appointed because he has never been a plan administrator before. Anybody who has extensive experience in the bankruptcy world and has represented both debtors and creditors is qualified to do the work that a plan administrator in a case such as this will be required to perform. And Mr. Hage absolutely has those qualifications in spaces.

There were also expressions of concerns by some pro se investors that I can only say amount to a desire to have more of a pit bull as a plan administrator, someone who will be absolutely more aggressive and satisfy the desires of some people for more aggressive treatment of the people who ran Voyager and more aggressive pursuit of potential litigation claims.

I understand what's behind that attitude. It does not actually in the real world translate into what makes for an effective plan administrator, or in my personal experience, what makes for an effective litigator. People who aren't lawyers sometimes think that it is the snarliest and nastiest people who are the most effective litigators. People who actually do litigation and certainly judges know that those are often the people who are the least effective

regarding the treatment of late claims have been modified to make clear that they will be disallowed only as I so order. Some Alameda FTX had at one point had objections, but it has dropped its objections.

The Bank of New York had an absolutely curious objection based on the odd fact that somebody apparently purported recently to transfer some real property to Voyager's name and Bank of New York has a mortgage lien on that property. That one was relatively easy to dispense with, and the confirmation order will provide Voyager is not claiming any ownership or interest in that property and that the automatic stay is no bar to the Bank of New York doing whatever it needs to do to enforce its mortgage.

I had previously indicated yesterday that I thought that the plan needed to be modified to say that -- to delete the provisions that said that the plan administrator and the Debtor do not have responsibility to try to locate people for whom checks or other communications were returned as undeliverable. Those provisions have been changed and I am satisfied with those changes.

I also said that the proposed provisions regarding professional fees had to be modified to make clear that their fees and their compliance with the provisions of the Bankruptcy Code have to continue through the effective date, not just through the confirmation date. I haven't actually

litigators. They are the most annoying and they may satisfy clients' desires to inflict pain on an adversary, but by all means they are absolutely not necessarily the most effective. So I don't think that particular criticism of Mr. Hage is well-taken and I find that he is qualified for the work and that his appointment is reasonable.

An ad hoc group of equity securityholders objected to the way the plan described the treatment of intercompany claims. I was under the impression that had been resolved until yesterday. Some additional questions were raised. I won't go into those in detail because the Debtors have now agreed and have disclosed the names of the people who will serve as independent directors of each of the separate debtor estates, and it is clear that if there is a conflict of interest between those estates, that the independent directors will have the right to appear and be heard on any issue involving where such a conflict exists. And I understand that those provisions had been included in the plan documents and that this objection is resolved.

A lot of other objections have been resolved and don't need to be discussed in detail here. The amended plan, as requested by the U.S. Trustee, has deleted provisions deeming all claims to be objected to. The proposal that the winddown debtor would have the sole authority to object to claims has been deleted. Provisions

seen if those changes have been made, but I cannot imagine that they are controversial at all.

Finally, there are a few other objections that were made but that I do not believe had merit. One owner of the VGX token argued that owners of VGX are being unfairly discriminated against. This is based primarily on the fact that there is no guarantee that the VGX token will continue to be traded in a meaningful way and therefore assurance that the VGX token will continue to have much if any value.

I note that under the terms of the plan, the amount of the allowed claims that customers have based on their VGX holdings will be based on the value that VGX had on the date that the cases were commenced and not based on its current value.

However, to the extent that some of the customers' distributions will be in the form of VGX, the values of those distributions will be based on the value that VGX has on a specified date in advance of the actual distributions.

The goal is to try, if possible, to make some in-kind distributions if they can be made, thereby possibly reducing tax consequences. But we have no guarantee that will work from a tax perspective.

I do not believe the Debtors are in a position to guarantee that VGX will continue to be traded any more than the Debtors can guarantee that any of the other coins that

will be distributed will continue to be traded. Similarly, the Debtors can make no guarantees about what will happen to the future values of any of the coins. Those are all things that will depend on market forces.

Customers who elect to receive in-kind distributions instead of cash distributions will receive VGX if they previously owned some VGX. But I don't think this amounts to a deferential treatment or an improper discrimination in violation of any code requirements.

The gist of the suggestion I think yesterday was that it is okay to treat other cryptocurrencies as having values based upon their market prices, but that somehow the market prices of VGX are actually illusory. Ordinarily, the market price of an asset represents the market's assessment of the potential risk and rewards associated with that asset. Even when a stock or other marketable item may appear to have little future prospect of value, it may nevertheless carry an option value based on the possibility that circumstances will occur that will lead to future values. Those option values or other market values are real values in the absence of proof to the contrary. And I certainly understand the objectors' worries about VGX, but I have no contrary proof here or nothing that would allow me essentially to say that the VGX token should be excluded from the distribution process and treated just as though it

address those now. We will over the course of the next day or so try to work out the terms of the final confirmation order and any of those remaining issues will be resolved in that process.

Is there anything else that anybody thinks I need to address in the course of this decision on the confirmation?

MR. ARONOFF: Your Honor, this is Peter Aronoff from the U.S. Attorney's Office for the Southern District of New York.

We had filed a letter around midday today requesting that the Court modify the provision in the confirmation order regarding the 14-day default stay (indiscernible). I know other parties have also raised that. I just wanted to (indiscernible).

THE COURT: I suspect that's why Mr. Morrissey is also standing up. I'm not going to give you the 14-day stay, but I'm not going to force some poor district judge to live with the kind of schedule I've been living with over the last five days. And so I will give you a -- if we enter an order tomorrow, I will stay its effect until Monday.

MR. ARONOFF: Understood, Your Honor.

THE COURT: Before I say that I'm going to do that, is that going to violate some term of the Binance U.S. deal?

didn't exist and just as though its value was a nullity.

I have one objection to the effect that the plan does not provide for a recovery for the holders of equity at the ultimate holding company level. In fact, the plan makes clear that those equity holders will be entitled to distributions if that ultimate holding company has assets once it pays its own creditors in full, although the current predictions are that that will not happen.

I believe I have addressed all of the objections that have been filed. And for the reasons stated, I have overruled the remaining objections. I therefore will confirm the plan subject to the changes that I have described.

As to the confirmation order, there are a number of provisions that seem to me to be superfluous or repetitive or otherwise unnecessary, or in a few instances improper. And I have made substantial revisions to the proposed confirmation order. And this morning, without making any changes that would suggest how I would rule here, I gave a form of confirmation order to the Debtors that showed those other changes that I would require in the event I were to confirm the plan. There are a lot of questions and a lot of things that are in the draft order that may not necessarily work in light of other provisions that I understand are in the plan, but I'm not going to try to

MR. SLADE: That's why I was looking at Mr. Goldberg.

MR. GOLDBERG: Your Honor, Adam Goldberg with Latham & Watkins. Binance U.S.'s goal is to complete this transaction as quickly as possible. If I could have two minutes to confer with the Debtors, we could see if that's an issue.

THE COURT: Okay.

MR. GOLDBERG: Your Honor, that would -- we are okay with that provision. Thank you.

THE COURT: Okay, thank you. All right. I do have another issue, but do you have a point on the confirmation itself, Mr. Morrissey?

MR. MORRISSEY: Your Honor, on the stay issue, frankly, Your Honor, I have to get back to the U.S. Trustee regarding whether Monday is okay. The issue obviously is, as I'm sure the people here are aware, is whether we would need to request a stay pending appeal. We would all like to avoid that scenario. But I have to find out whether the extension until Monday will put that issue to bed, at least for now. Thank you, Your Honor.

THE COURT: All right. Okay. I also have before me a motion to appoint a trustee or motions to --

MS. DIRESTA: Your Honor, can I ask a question about the customer data?

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THE COURT: Let me finish this first. Okay?

MS. DIRESTA: Okay, thank you.

THE COURT: But promise I won't forget you.

I have a motion to appoint a trustee or motions to appoint a trustee and/or to remove the Unsecured Creditors' Committee members and replace its advisors.

The Code provides that I may appoint a trustee for cause at any time before the confirmation of the plan, of course based on my decision that we are now less than a day away from the entry of an order confirming a plan. There is no way, even if I were to order the appointment of a trustee, that one would be in place before the whole issue would be moot, as the confirmation order will have been entered. I know that's frustrating for the people who have raised the motion, but I also think that while the motion makes a lot of accusations that actually have not really been answered by the Debtors, at this late stage in the case and right during the middle of the confirmation process, I can't see how the issues that were raised were of a kind that would provide cause to interrupt that process and to throw everything back into disarray. It just wouldn't have made sense to me if for reasons I said yesterday I didn't really think that there was cause at this stage of the case.

I also have two motions for returns of assets that essentially argue that customers should be allowed to take

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on behalf of Binance U.S., Your Honor. Home addresses would be part of level one data that would be transferred.

THE COURT: I'm sure that's level one.

MS. DIRESTA: Okay. And then what about the biometric? You didn't mention that.

MR. GOLDBERG: Could you specify what you mean?

MS. DIRESTA: When you have to hold the phone to your face and it does this biometric configuration of your face and captures your data and it stores all of that.

MR. GOLDBERG: I mean, I would think that's part of the selfies that would be available. So customers will be entitled to opt out of the transfer of that data to Binance U.S.

THE COURT: Your phone recognizes your face. That's just on your phone, isn't it?

MR. SLADE: Yeah. I think the biometrics is an Apple function, not --

MS. DIRESTA: No, it gets sent.

THE COURT: It gets sent? That's news to me.

MS. DIRESTA: Yeah, the biometric information does get sent to the company.

MR. GOLDBERG: Your Honor, we have agreed that we are not acquiring selfies or this data for customers that opt out.

THE COURT: Do you mind adding biometric data to

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out everything that was in their accounts and shouldn't be given only partial distributions as the plan contemplates. I simply cannot allow that. No bankruptcy case could allow that. If one customer started doing that, it would just mean that the next customer would get less. And the whole point of the Bankruptcy Code is to make sure that everybody gets equal distributions. And since there's not enough to go around here, nobody can get everything that was in their accounts. That's simply a basic matter of bankruptcy. So I will deny those objections.

And you had a question about the customer information? On the phone? I'm surprised I don't already -

MS. DIRESTA: Yes. Thank you, Your Honor.

THE COURT: I'm surprised I don't already recognize your names or your voices, but I'm afraid I don't.

MS. DIRESTA: Gina DiResta, Your Honor.

THE COURT: Yes.

MS. DIRESTA: So I wanted to ask, my home address, is that part of the level one or level two KYC that was being mentioned?

THE COURT: Do you know the answer?

MS. DIRESTA: Because I want to know if my home address is going to stay with Binance or not.

MR. GOLDBERG: Adam Goldberg of Latham & Watkins

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what you're agreeing to exclude?

MR. GOLDBERG: Yes, Your Honor.

THE COURT: Okay. So they will exclude that.

MS. DIRESTA: Okay. And with regard to the social security information. And the attorney for Binance was saying that it would be costly and it would cost \$20 per customer and there's a million customers. I just want to address the math on that. On paper, there's about 1 million customers of Voyager. I believe there's about 700,000 accounts that have under \$100. And I believe there's about 400,000 accounts that are under \$10. So those are kind of more like (indiscernible) accounts. And you can kind of see that with how many people actually participated in voting, which is under 62,000 people. And then supposedly 175,000 people have already opened accounts. There are only 2,117 people who voted no to the plan like I did. So if you assume that in a two-week opt-out period that all 2,117 people were to opt out, that only equates to \$32,340 that Binance would have to pay if you pretend that all of those people decide to turn around and open an account. So I just (indiscernible) company that deals in billions of dollars, that that's a lot of money and that that would break them. And if they think it will, I'm happy to pay the \$20 to reinstate all of my KYC information for level one in the event I ever lose my mind and decide to open a Binance

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account. But I just don't think when you look at it mathematically there's justification for holding the social security number. I just don't think it's justified based on the math.

THE COURT: Can you take that back to your client, Mr. Goldberg?

MR. GOLDBERG: Your Honor, Adam Goldberg from Latham & Watkins on behalf of Binance U.S. I will of course take that back to my client, but I fully expect the answer will be we are not making any changes to the deal that has been proposed and that is supported by 97 percent of customers voting.

MS. DIRESTA: Thank you for allowing me to speak, Your Honor.

THE COURT: Okay.

MR. LOREN: Your Honor, this is John Loren, pro se creditor. I have a few questions regarding Binance.

THE COURT: Just hang on. Hang on one second, Mr. Loren.

Mr. Goldberg, I've given you a lot of these things to take back. In the real world, I don't know how many people will take advantage of this election that I am making available and just what effect it would be or especially what effect it would be if, as the customer just suggested, people who made the election and then wanted to be Binance

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crypto from Binance. Will that fee be waived for Voyager users or are we expected to pay Binance to withdraw?

THE COURT: Does anybody here know?

MR. GOLDBERG: Your Honor, I don't know. I think all of that would be disclosed on the Binance U.S. website.

THE COURT: I don't think any of the attorneys here know the answer to your question.

MR. LOREN: Okay. I am on the Binance website, and there are fees to withdraw. So (indiscernible) pay Binance to get our money. The second question is in regards to the daily withdrawal limit. I believe there's a limit of \$5,000 U.S. Dollars per day to withdraw from Binance. Will that be waived for Voyager users? Will my claim take a month to get my money out of Binance?

MR. GOLDBERG: Your Honor, Adam Goldberg with Latham & Watkins on behalf of Binance U.S.

I am being told that the limit depends upon the level of KYC that a customer complies with. So if they achieve the KYC two level with the additional document uploads, then there would be different withdrawal limits. But I would expect all of this information is available through Binance U.S. website and customer service inquiries.

MR. LOREN: Got it. Because the website I see is showing \$5,000 withdrawal per day. And that's going to take me a month to get my money. And I have to pay them to get

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customers would have to pay you the \$20 that you say it would cost. I understand you don't want to do this and wouldn't want to do this if, you know, it would mean 700,000 potential customers are going to leave you. I find it hard to believe that that's really what we're talking about here. And it certainly makes me more comfortable if customers have the right to stop their social security information. So just keep that in mind and talk to your client as a practical matter about whether it's really so important that they want to make me try to figure out what I have to do here and whether it's a small enough issue that they could just do what I've asked. Okay?

MR. GOLDBERG: I understand, Your Honor. Just to give you some insight onto this issue, we sought to negotiate a way to leave behind all of this data with the Debtor. It would require a meaningful price modification per customer that opted out. And the Debtors flatly rejected that. Understandably. This is I think in the end therefore an issue of business judgement of the Debtors in selling their assets. Thank you, Your Honor.

THE COURT: Thank you. All right. Mr. Loren, you had a question.

MR. LOREN: That is correct, Your Honor. Thank you for your time. I have two questions in regards to the Binance withdrawal process. There are fees to withdraw

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my money, too. It's very sad.

THE COURT: Let me ask you to -- I certainly have no ability to answer this question or to deal with it. This is a practical question. Let me ask you to get in touch or ask the Debtor's counsel to get in touch with you and see if they can facilitate putting you in touch with somebody who can give you a very precise answer to your questions. Okay?

MR. LOREN: Okay. Thank you for your time.

THE COURT: All right. Anything else?

MR. SLADE: Not from us, Your Honor. Thank you very much.

THE COURT: All right. Yes.

MR. ARONOFF: Your Honor, it's Peter Aronoff from the U.S. Attorney's Office again. I'm trying to run some things down here, talking with several people.

Just returning to the question of the stay. You know, we were obviously trying to move as quickly as possible to try to make a decision about whether to seek an appeal. That would require some coordination from the government. And this is an issue that from my perspective only arose just within the last few days. And so we're now -- we're moving as quickly as we can, but it takes time.

I believe this is a situation where having a little more time on the stay now will lessen the need for emergency applications when it's possible wouldn't be

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necessary if we just have an extra few days. And so I would ask that the Court --

THE COURT: Listen, you discuss that with the parties if you can work that out with the parties. If you can convince them that there's some prospect that you're not actually going to pursue the issue, you can look at it further. I don't know, maybe you can work something out with them. But in the first instance, do that. Okay?

MR. ARONOFF: Okay. Thank you, Your Honor.

THE COURT: All right. Your judge is very tired and he's going to --

MR. HENDERSHOTT: Your Honor.

THE COURT: Yes.

MR. HENDERSHOTT: Your Honor, Tracy Hendershott, pro se creditor. One question and one comment if I may.

THE COURT: Yes.

MR. HENDERSHOTT: The question is actually for pro se creditor Lisa Trevino, who has had to focus on her day job today. And she asked me to just put into the record if there was any follow-up with her action to getting data back that she requested from the Debtors. Your Honor, once this confirmation is done today, she wasn't sure if she was able to engage with you any further to follow up on that. So I committed to her I would ask that in the hearing on her behalf.

But thank you for the clarification.

MS. OKIKE: Your Honor, on behalf of the Debtors, we just want to thank you for taking extensive time to really help us navigate through very complex and challenging issues. So we really appreciate it.

THE COURT: okay.

MR. GOLDBERG: Gratitude to Your Honor and all of your staff and chambers. Thank you. The Committee thanks you as well.

THE COURT: Thank you all for your submissions, and we are adjourned.

(Whereupon these proceedings were concluded at 5:14 PM)

MS. OKIKE: Your Honor, Christine Okike on behalf of Kirkland & Ellis. We will provide her with the data. And if she needs an extension of the deadline with respect to the merit objection, we'll allow for that.

THE COURT: Very good.

MR. HENDERSHOTT: Thank you. I will relay that to her. Thank you both.

And then just one comment. I did want to clarify, Your Honor, your interpretation of our request for having a third party (indiscernible) -- I'm drawing a blank. I'm tired. We're all tired -- for the winddown trustee. We weren't looking for a snarling bit pull, Your Honor. We were looking for effectiveness. You've seen the UCC go along with every single exception and (indiscernible) all along we just didn't have confidence that there would be a level of (indiscernible), which is different. Effectiveness is different than a snarling pit bull. I just wanted to clarify that.

THE COURT: All right.

MR. HENDERSHOTT: Thank you, Your Honor.

THE COURT: Well, if that's true, maybe I'll delete that part of my discussion and commentary from the final version of the decision.

MR. HENDERSHOTT: Thank you, Judge.

THE COURT: I thought I understood it differently.

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CERTIFICATION

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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[abide - adam]

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[estoppel - extensive]

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[going - hearing]

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[impermissible - instructions]

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[hearsay - impede]

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[insufficient - january]

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[jean - lawyers]

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[midday - negotiation]

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[neither - obviously]

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[truth - unknowingly]

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